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ABSTRACT

This report examines the portrayal of the Second Amendment of the Constitution (the right to keep and bear arms) in U.S. history and U.S. government textbooks. The document contends that not only were there numerous errors and misrepresentations of facts, but also there were many omissions of various events throughout history. Further research showed that the history of the second amendment virtually was omitted from the texts. The guiding questions of the research included: (1) How accurately and comprehensively do senior high school U.S. history and U.S. government textbooks portray the Second Amendment and the circumstances of its adoption?; (2) When the Second Amendment is included, how much emphasis is given to it compared to other amendments?; and (3) How thoroughly and accurately do the textbooks portray the courts' interpretation of the Second Amendment? Content analysis was conducted for 24 senior high school U.S. history and 8 U.S. government textbooks for all events relating to the Second Amendment. fourteen areas of historical events, legislation, and judicial decisions were examined to determine the accuracy of the coverage of the topic. The study concludes that the textbooks omit important historical and judicial precedents that would give students an accurate portrayal of the evolution of the Second Amendment and subsequent judicial opinions, without which the amendment seems to have sprung from an intellectual vacuum. Contains 30 references. (EH)

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MISFIRING ON THE
SECOND AMENDMENT
IN AMERICA'S TEXTBOOKS

BY

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Recently the Texas Board of Education adopted United States history textbooks after fining the publishers $239,500 for more than 3700 errors in the textbooks. Errors in the books included incorrect dates and erroneous identification of historical figures. Texas School Board member Will Davis commented, "We wonder why our children make mistakes in history and geography when part of the reason might be that they get textbooks full of errors."[1]

Because the inaccuracies were a case of fact, not interpretation, the Texas controversy drew attention to the way in which textbooks are produced. Often they are developed by teams with little or no experience in the subject.[2]

Errors are not the only criticism of today's textbooks. Lynn Cheney, chairman of the National Endowment for the Humanities, commented that events "float free, unmoored from what came before or after....Subjects full of passion and drama and potential trouble for publishers are often avoided."[3] The story of how democratic institutions evolved is also left out of the textbooks.

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[1] Debra Viader, "Texas Board Delays Decision on Error Filled History Texts", Education Week, Vol. XI, No. 12, Nov. 20, 1991,5.

[2] "Texas: A Shootout over Accuracy,"Social Studies Review No. 11, Spring 1992, 9.

[3] Lynn Cheney, "No More Going By the Book," Virginia Journal of Education March 1991, 8.

These criticisms became more clear in this study when the author investigated the portrayal of the Second Amendment in the United States history and United States government textbooks. Not only were there numerous errors, but there were many omissions of various events throughout history. The original intent of the framers, as well as the evolution of the right to bear arms from our English heritage, was not covered nor were the events that came after the adoption of the Second Amendment accurately depicted. The story of the Second Amendment was truly an "idea floating free, unmoored from what came before or after."[4]

The textbooks misrepresented the ideals of the founding fathers like James Madison who wrote of an individual's right to bear arms. Unfortunately, the textbooks follow another founding father, Fisher Ames of Massachusetts. Writing to Thomas Dwight about Mr. Madison's amendments, Ames said:

> It contains a bill of rights, the right of enjoying property, of changing government at pleasure, freedom of the press, of conscience, of juries, exemption from general warrants....This is the substances. There is too much of it. Oh! I had forgot, the right of the people to bear arms.[5]

That is what has happened to the portrayal of the Second Amendment in the textbooks: it has been forgotten. It has been forgotten in the description of the English heritage, in the slave codes, as a right in state constitutions, and in major cases and legislation, as well as misrepresented in the discussion of the Bill of Rights, and in major cases dealing with the Second Amendment.

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[4] Ibid., 8.

[5] Ames, Seth, ed., Works of Fisher Ames, Boston: Little Brown and Co., 1854, 53.

STATEMENT OF THE PROBLEM

The problem under investigation in this study was how the history of the Second Amendment, the right to keep and bear arms, was portrayed in the senior high school United States history and United States government textbooks. Three major questions guided this study:(1) How accurately and comprehensively do senior high school United States history and United States government textbooks portray the Second Amendment and the circumstances of its adoption? (2) When the Second Amendment is included, how much emphasis is given to it compared to other amendments? (3) How thoroughly and accurately do the textbooks portray the courts' interpretation of the Second Amendment? A series of sub-questions guided the analysis of each event covered in the textbooks.

(1) Did the author explain the legal, philosophical, and colonial origins of the right to keep and bear arms?

(2) Did the author list the Second Amendment in the discussion of the Bill of Rights?

(3) Did the author describe the right to keep and bear arms in major events in history, such as slave codes and black codes.

(4) Did the author describe major federal legislation dealing with the right to keep and bear arms, such as the Ku Klux Klan Act, the Civil Rights Act of 1866, the National Firearms Act of 1934, and the Gun Control Act of 1968?

METHODOLOGY

The purpose of this study was to examine how senior high school textbooks on American history and government portray the Second Amendment in historical and contemporary perspectives. Content analysis was conducted for each senior high school United States history and United States government textbook for all events relating to the Second Amendment, the right to bear arms. The coding unit for the content analysis was the passage describing each of the historical events selected for analysis. The rater recorded the frequency of the coverage for each event dealing with the Second Amendment on a chart. (Diagram A). The frequency of the coverage of the Second Amendment in relation to the coverage of other amendments was tabulated on a chart (Diagram B). The criteria used to analyze the quality of the passage were (1) Historical origins of the Second Amendment, (2) Legislation dealing with the Second Amendment, and (3) Judicial cases dealing with the Second Amendment.

IMPORTANCE OF THIS STUDY

In most classrooms textbooks are used as the main source of information. Since they are this important, a balanced presentation is essential. "Balanced" means there should be an equal or fair representation of opposing sides of major issues. An alteration of reality, even by omission is a distortion, a form of censorship.[6] The portrayal of the Second Amendment, however, was not the only controversial issue receiving an unbalanced coverage in the textbooks. A study of five textbooks conducted by Kelley and Gross found that although controversial issues were presented, in no instance was there a balanced presentation of controversial topics.[7]

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[6] Michael Kelley, "Controversy and Social Studies Textbooks," Social Education, March/April 1981, 62.

TEXTBOOK AND SUBJECT SAMPLES

The study which is the topic of this paper examined the portrayal of the Second Amendment in twenty-four United States history textbooks and eight United States government textbooks. Fourteen areas of historical events, legislation, and judicial decisions were examined to determine the accuracy of the coverage of the Second Amendment. The sample of subjects analyzed are listed in Diagram A. These include the following areas: English heritage, colonial government, slave codes, state constitutions, Bill of Rights, 1866 Civil Rights Act, 14th amendment, Black Codes, Ku Klux Klan Act, U.S. v. Miller;U.S. v. Cruikshank; Presser v. Illinois; the National Firearms Act of 1934, and the Gun Control Act of 1968.

Justification for the selection of the fourteen subjects was as follows. The category "English origins", were selected to represent the first step in the evolution of the Second Amendment. "Colonial origins" represented the bridge in the evolutionary process from English law into colonial law. State constitutions were examined because four states (Pennsylvania, North Carolina, Vermont and Massachusetts) had provisions for the right to bear arms before the adoption of the U.S. Constitution.

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[7] Ibid., 62.

The discussion of the adoption of the Bill of Rights was another step in the process. The category "Black Codes", were selected because they represent the temper of the time after the American Civil War in which freed blacks were denied the rights of white citizens.

Legislation was also an important category for investigation and four legislative acts were chosen for the following reasons: the Civil Rights Act of 1866 was chosen because it represented the expansion of the right to bear arms for all citizens; the Ku Klux Klan Act, Sec. 8, was used as an example of legislation which expanded the right of black citizens to bear arms; the 1934 Firearms Act is representative of legislation which taxed certain firearms; the 1968 Gun Control Act represents current federal law on the right to keep and bear arms.

Judicial decisions form another part of the investigation. Three judicial cases of major importantance were chosen; these include Presser v. Illinois, in which the Second Amendment was not incorporated against state government action via the Fourteenth Amendment; U.S. v. Cruikshank in which the Supreme Court noted that the Second Amendment only applied to the federal government, and that citizens deprived of fundamental rights by other citizens or state officials must look to the law of that state for a remedy; U.S. v. Miller (1939) upheld National Firearms Act.

The books surveyed included the following United States history books: The American Pageant, Bailey and Kennedy (D.C.

Heath 1991); A History of the United States, Boorstin and Kelley (Prentice Hall 1992); American Voices, Carol Berkin (Scott Foresman 1992); The National Experience, John Blum (Harcourt Brace Jovanovich 1989); The Enduring Vision, Paul Boyer (D.C. Heath and Co. 1990); A History of A Free Nation, Bragdon (Glenco 1992);America's Heritage, Margaret Branson (Ginn 1986), Our Land Our Time, Joseph Conlin (Holt, Rinehart and Winston 1991); The United States: A History of the Republic, James Davidson and Mark Lytle (Prentice Hall 1990); A History of the United States, Thomas Dibacco (Houghton Mifflin 1990); America Past and Present, Robert Divine (Harper Collins Publishers 1991); The American Nation, John Garraty (Harper Collins 1991); American Tradition, Green, Becher, Goviello (Merrill 1986); The Americans, Jordon (McDougal, Little and Co. 1991);Challenge of Freedom, La Raus, Morris, Sobel (Glenco/McGraw Hill 1990); Legacy of Freedom, Glenn Linden (Laidlaw 1986); Exploring American History, John O'Connor (Globe 1991); American Odyssey, Gary Nash (Glenco 1991); The American People, Gary Nash (Harper Collins Publishers 1990); American Adventures: People Making History Ira Peck (Scholastic); Heritage of Freedom, Donald Ritchie (MacMillian 1986); Life and Liberty, Philip Roder (Scott Forseman 1984); Triumph of the American Nation, Todd and Curti (Harcourt Brace Jovanovich 1990), and American Spirit A History of the American People, Clarence Ver Steeg (Prentice Hall). The American government books include:Civics Participating in Our Democracy, James E. Davis (Addison Wesley 1991); Civics Government and Citizenship, Jack

Fraenkel (Prentice Hall 1990); Government in America, Richard Hardy (Houghton Mifflin 1992); Macgruder's American Government, William McClenaghan (Prentice Hall 1991; Government in the United States, Richard Remy (Glenco/MacMillian/McGraw Hill 1990); Government, D. Grier Stephenson (Harper Collins Publishers 1992); American Government, Mary Jane Turner, Kenneth Switzer,and Charlotte Redden (Merrill 1991);American Government, James Q. Wilson (D.C. Heath 1992). An analysis by event follows.

HISTORICAL BACKGROUND OF THE SECOND AMENDMENT

The Second Amendment to the United States Constitution reads, "(a) well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

The right to keep and bear arms was widely accepted in the 18th century colonies, it derived from English common law. England relied on a citizen's militia for internal defense. They were called upon by the sheriff to stop local disturbances.[8] The colonists carried with them to North America this "right of Englishmen" to keep and bear arms.

Under the Articles of Confederation each state was required to keep a well regulated militia. However, one of the defects of the Confederation was the lack of power to raise a standing army for the confederation defense. The problems caused by Shay's rebellion reflected the need for providing for the common defense.

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[8] Ellen Alderman and Caroline Kennedy. In Our Defense: The Bill of Rights in Action, New York: William Morrow, 1991, 98,

Joyce Lee Malcolm, "The Right of the People to Keep and Bear Arms: The Common Law Tradition," Hastings Constitutional Law Quarterly, Vol. 10, No. 2 (Winter 1983), 285-314.

From the earliest colonial days there was a traditionally a fear of having standing armies in peacetime. The British misuse of troops in the colonies was not the only grievance the colonists had, but it was the most inflammatory.[9] The tyranny of the British brought the colonists together in agreement that the government had failed and must be overthrown.

The sentiment that a standing army in time of peace was "dangerous to the liberties of the people" came from the fear that such an army would be used by an arbitrary government to tyrannize its own people. Most of the delegates to the Constitutional Convention in Philadelphia in 1787 believed this.

The right to keep and bear arms was specifically recognized in four state constitutions and was recommended by several states to become part of the federal document. Seven states, whose state conventions were voting to adopt the federal Constitution, offered either majority or minority proposals on arms. During the convention period supporters of the Constitution wrote extensively on its features and benefits. James Madison wrote in favor of a private right to arms as did Noah Webster and Richard Henry Lee.[10] The Virginia convention proposed several amendments on July 27, 1788. Article 17 reads:

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[9] David Engdahl, "Soldiers, Riots and Revolution: The Law and History of Military Troops in Civil Disorders," Iowa Law Review 57 (October 1971),22.

[10] Robert Dowlut, "Federal and State Constitutions" University of Dayton Law Review, Vol. XV, No. 1 (1989) 64,65.

> That the people have a right to keep and bear arms; that a well regulated militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free state...[11]

The New York convention on July 26, 1788 proposed:

> That the people have a right to keep and bear arms; that a well regulated militia including the body of the people capable of bearing arms is the proper, natural and safe defence of a free state.[12]

James Madison agreed during the ratification debates that one reason Americans need not fear the power of the new federal government was because the citizens had "the advantage of being armed, which you possess over the people of almost every nation...."[13]

The Anti-federalists also strongly supported the right of citizens to bear arms. Patrick Henry declared, "The great principle is that everyman be armed....Everyone who is able may have a gun." Richard Henry Lee argued that "to preserve liberty, it is essential that the whole body of the people always possess arms and be taught alike, especially when young, how to use them.[14]

During the debates of the First Federal Congress, Madison proposed that the amendments be inserted into the text of the

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[11] Kenneth Bowling. Creating the Bill of Rights, Baltimore: Johns Hopkins University Press, 1991, 19.

[12] Ibid. 22.

[13] Lorenca Roscal, With Liberty and Justice for All, Calabasas, California: Center for Civic Education, 1991, 54.

[14] Ibid.

Constitution. The "right to keep and bear arms" was initially included with the other individual rights in Article I, Sec. 9. The House discussed this article on August 28, 1789, which read:

> A well regulated militia, composed of the body of the people being the best security of a free state, the right of the people to keep and bear arms shall not be infringed, but no person religiously scrupulous shall be compelled to bear arms.[15]

Several proposed motions were denied. These included a phrase by Gerry to add "trained to arms" to identify the militia. Another rejected phrase referred to the subordination of the military to the civil authority. On August 24, 1789, the House recommended the Articles of Amendment to the states. The fifth article read:

> A well regulated militia composed of the body of the People, being the best security of a free state, the right of the People to keep and bear arms,shall not be infringed, but no one religiously scrupulous of bear arms shall be compelled to render military service in person.[16]

On September 4, 1789 the Senate amended Article 5 to read:

> A well regulated militia, being the best security of a free state, the right of the people to keep and bear arms, shall not be infringed.

On September 9 the Senate replaced "the best" with "necessary to the". The Senate also rejected the motion to insert "for the common defence" after bear arms.[17] The Senate altered the original amendment by dropping the clause that recognized the rights of conscientious objectors.[18] On September 14, 1789, articles of amendment were agreed to by the Senate. This included Article the Fourth:

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[15] Bowling, Creating a Bill of Rights, 30.

[16] Ibid., 38.

[17] Ibid., 39.

> A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.[19]

Congress finally voted to put the Bill of Rights at the end of the Constitution and the guantee of right to bear arms became the Second Amendment because the first two were not adopted.

Once resigned to both popular and intellectual obscurity, in the past quarter century the Second Amendment has achieved a level of public and legislative attention that occasionally rivals some of the more traditionally controversial amendments in the Bill of Rights.

It was the purpose of this study to examine how senior high school United States history and United States government textbooks portray the history of the Second Amendment. This is an important consideration because the study of the entire Bill of Rights is basic to the study of American history and American government by high school students.

RESULTS: DATA ANALYSIS

TABLE I US HISTORY AUTHORS BY EVENTS

ENGLISH HERITAGE: Of the twenty-four authors surveyed,

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[18] Richard Bernstein, Are We to Be a Nation,. (Cambridge: Harvard University Press, 1987), 263.

[19] Ibid., 47.

Berkin and Divine described our English heritage. None explained that the right to bear arms evolved from this heritage.

COLONIAL GOVERNMENT: Four of the twenty-four authors covered the colonial governments. None of them described the colonial origins of the Second Amendment.

SLAVE CODES: Seventeen of the twenty-four authors covered the slave codes (Bailey, Blum, Boyer, Conlin, Davidson and Lytle, Dibacco, Divine, Garraty, Green, La Raus, Nash, O'Connor, Peck, Ritchie, Roden, and Todd and Curti. Five of the authors explained that the slave were denied the right to own weapons (Nash, Peck, Ritchie, Roden, and Todd and Curti).

STATE GOVERNMENT: Ten of the twenty-four authors described the contents of the state bills of rights. None of them described that some states included a right to bear arms in their state bill of rights (Berkin, Boyer, Bragdon, Conlin, Davidson, Divine, Garraty, Green, Nash in Odyssey and People).

BILL OF RIGHTS: All of the authors described the bill of rights but only seventeen of them described the right to bear arms (Bailey, Berkin, Blum, Boyer, Branson, Conlin, Davidson, Dibacco, Divine, Garraty, Jordon, Linden, Nash, Peck, Ritchie, Roden, Todd and Curti and VerSteeg).

1866 CIVIL RIGHTS ACT; Nine of the twenty-four authors surveyed covered this. None of them explained that it meant an expansion of the right to bear arms (Bailey, Berkin, Boorstin, Boyer, Garraty, Nash in Odyssey and People, Peck and Ver Steeg).

14TH AMENDMENT: Fifteen of the twenty-four authors covered this topic (Berkin, Boyer, Branson, Conlin, Dibacco, Divine, Garraty, Green, Mash, O'Connor, Peck, Ritchie, Roden, VerSteeg). None of them explained that "equal protection of the laws" and rights of citizens also included to the right to bear arms or that the drafters of the 14th amendment intended that the privileges and immunities clause incorporate the Bill of Rights guarantees against state action.

BLACK CODES: All of the authors except Ver Steeg discussed the Black Codes. Only eleven of them explained that the Black Codes denied Blacks the right to bear arms (Berkin, Bragdon, Conlin, Davidson, Garraty, Green, Jordon, Linden, Nash, Peck, Todd and Curti).

KU KLUX KLAN: Twenty of the twenty-four covered the topic (Berkin, Blum, Boorstin, Boyer, Conlin, Davidson, Dibacco, Divine, Garraty, Green, Jordon, Linden, Nash, O'Connor, Peck, Ritchie, Roden, Todd and Curti, Ver Steeg). None explained that blacks were stripped of their weapons because of Klan activities.

U.S. V. CRUIKSHANK: Only three of the authors described this case (Blum, Boyer, and Nash).

U.S. V. MILLER, PRESSER V. ILLINOIS, NATIONAL FIREARMS ACT OF 1934 AND GUN CONTROL ACT OF 1968. None of the authors surveyed covered any of these.

TABLE II

DATA ANALYSIS OF AMERICAN GOVERNMENT AUTHORS BY EVENTS

ENGLISH HERITAGE: Of the eight authors surveyed, four of the authors discussed the English background of the Bill of

Rights (Davis, Hardy, McClenaghan and Remey). Only one author, Hardy discussed the right to bear arms came from the English Bill of Rights.

COLONIAL GOVERNMENT: Three of the eight authors described the colonial origins(Davis, Remy, and Stephenson). None described the backgrounds of the Second Amendment.

STATE GOVERNMENT: Five of the eight discussed this topic (Hardy, Davis, McClenaghan, Turner and Wilson). None explained that many of the state bills of rights had a provision for the right to bear arms.

BILL OF RIGHTS: All of the authors described the Bill of Rights. None discussed the adoption of the Second Amendment.

14th AMENDMENT: Seven of the eight authors discussed this. Only Turner did not. Remy was incorrect to say that only the 2nd, 3rd, and 10th amendments have not been incorporated.

U.S. V. MILLER: Only one of the authors, McClenaghan, discussed the case. He misinterpreted it.

PRESSER V. ILLINOIS and U.S. V. CRUIKSHANK: None discussed these cases.

NATIONAL FIREARMS ACT OF 1934. Only McClenaghan described this act.

FIREARMS ACT OF 1968: None described this by name.

TABLE III

COVERAGE OF AMENDMENTS BY U.S. AUTHORS

The purpose of this table is to ascertain the emphasis of the coverage of the Second Amendment compared to other amendments. The frequency of coverage varied from the coverage of the 14th amendment which was mentioned 107 times in the texts to the coverage of the 13th and 9th amendments which were mentioned eleven times. The Second Amendment was described fourteen times.

TABLE IV

COVERAGE OF AMENDMENTS BY U.S. GOVERNMENT AUTHORS

The purpose of this table is to ascertain the emphasis of coverage of the Second Amendment compared to other amendments in the government books. The amendment coverage varied from the 14th amendment, which was mentioned ninety times, to the seventh amendment which was described nine times. The Second Amendment was described ten times.

DESCRIPTIVE ANALYSIS OF EVENTS BY AUTHORS

ENGLISH HERITAGE

If there is any heritage that America owes to England that stands out as most significant, it is the rule of law. Our country is a land of laws, and the rule of law and reason over force has been the hallmark of our English inheritance. In legal theory from the beginnings of the common law, the Great Council of Nations, which became the King in Parliament and ultimately, the English Parliament, has been the principal organ and model of legislative lawmaking. The doctrine of common law was taken over in colonial America. This common law is the general system of law which incorporates the entire body of law, including the statutes, administered in the common-law tribunals.

The right to bear firearms and to use them in defense of one's person and property has long been a part of common law (English and American) recognized as an inherent right. Along with the right went responsibility, and under most circumstances, when damage resulted from the discharge of firearms under one's immediate control, absolute responsibility was imposed at common law. The colonies, by legislative acts, set up an official standard of care, usually by ordinance designed not to restrict gun ownership and enjoyment, but rather reckless use. Our English heritage was a recognition of the rights of the citizens--dating back to the Magna Charta and the respect afforded the rule of law founded to enforce and implement those rights.

Of the twenty-four United States history books and the eight United States government books surveyed only two history and four government books mentioned our English heritage. However, only one of these, Hardy addressed the right to bear arms among those inherited from the English.

BERKIN, CAROL, AMERICAN VOICES P. 39

> The creation of the House of Burgesses assured English settlers that they would have all the legal privileges and protection known popularly as the "rights of Englishmen." These rights had a long and proud history beginning in 1215 when English Barons or nobleman forced King John to grant and abide by a charter of liberties called the Magna Carta.

This entry is accurate and historically significant, but it does not address the right to bear arms among those inherited from the English.

DAVIS, JAMES CIVICS PARTICIPATING IN OUR DEMOCRACY P. 76

> The English Bill of Rights listed the rights of all English citizens, not just nobles. It included the ideas that would later find a place in our government. One is that everyone even government leaders, must obey the law. Another is that all people have the right to trial by jury and the right to make a formal petition or request to the government.

This entry is accurate but limited in its historical significance. There is no mention of the right to bear arms.

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 87

> As part of the settlement, William and Mary accepted a Bill of Rights, a document stipulating the constitutional rights of all Englishmen.

This entry is highly limited and doesn't explain the connection between the acceptance by William and Mary of a bill of rights for all Englishmen and the American inheritance of those rights, except by inference.

HARDY, RICHARD. GOVERNMENT IN AMERICA. P. 32

> The English Bill of Rights includes these guarantees:...The right of certain subjects to keep and bear arms. This provision is found in the Second Amendment.

This entry is accurate and lengthy. It does address the inherent right to bear arms incorporated in the Second Amendment from the English Bill of Rights.

MCCLENAGHAN,WILLIAM. MAGRUDER'S AMERICAN GOVERNMENT P. 29

> The history of many of the basic rights held by the people of the United States can be traced to several landmark documents from England. Together these documents laid the foundations for such concepts as limited government, representative government, popular sovereignty and civil liberties.

This entry is accurate but limited. No mention is made of the inherent right to bear arms as guaranteed under English law incorporated into colonial law, and ultimately guaranteed (but not created) by the Bill of Rights (Second Amendment.)

REMY, RICHARD. GOVERNMENT IN THE UNITED STATES P. 32

> By the time the time the first colonists reached North America, the idea that government was not all powerful had become an accepted part of the English system. The idea first appeared in the Magna Charta or Great Charter, signed by King John of England in 1215. This document provided for trial by jury of one's peers or equals, for protection against unjust punishment and the loss of life, liberty and property except according to the law...The English Bill of Rights set clear limits on what the king or queen of England could and could not do...

This entry is fairly good, although not fully definitive of our English heritage, but at least it gives the student a feel for the ideas of freedom the colonists brought over with them as they set out to make the laws for the new colonies. There is no mention of the right to bear arms in this entry.

COLONIAL GOVERNMENTS

Early English colonies in North America were established by Royal Charters, which represented the King's authorization of colonization under private enterprise and the king's definition of the relationship of the projected colony to the mother country. These charters vested power of government in the colony to England, and the king determined what officers, laws and ordinances were necessary for the colony, which laws had to conform to the laws of England.

Toward the end of the 17th century, however, the king began to find the charters to be obstacles in the path of colonial control and tried to substitute the royal province for colonial government, which had its beginnings in the Virginia House of Burgesses in 1619. The first written constitution in the colonies was found in Connecticut in 1639, called the Fundamental Orders of Connecticut. Laws in the colonies were virtually laws of England, administered by the colonial judiciary which followed patterns of English procedural law.

The concept of being armed for defense was necessary for survival, not only against immediate danger (and as a vehicle for food supply) but against the tyranny of oppressive government. An armed citizenry is a free citizenry.

From these strong expressions of fundamental rights, such as the right to bear arms, other considerations of fundamental rights with origins in the Magna Charta addressing fundamental liberties are now embodied in some form in every one of the American constitutions (state as well as federal) to the effect that every person shall be protected in the enjoyment of his life, liberty and property, except as may be declared forfeited by the judgment of his peers or the law of the land.

DAVIDSON AND LYTLE. THE UNITED STATES: A HISTORY OF THE REPUBLIC
P. 45

> Accordingly in 1639 the settlers in the Hartford area adopted the Fundamental Orders of Connecticut as their new plan of government. It differed significantly from the Massachusetts system in basing colonial authority on self-government by the people rather than on the divine rule of kings.

This entry is accurate but there is no mention of the right to bear arms, which makes the excerpt deficient since this is a critical aspect of the issue articulating an "inherent" right to bear arms which pre-existed the Bill of Rights.

DIBACCO, THOMAS. HISTORY OF THE UNITED STATES P. 56

> The tradition of local self government was nurtured by the colonists' awareness of the "rights of Englishmen." These rights were first expressed in the Magna Carta of 1215. This document asserted the right to trial by a jury of one's peers, no imprisonment without trial and no taxation except by legal means.

This entry is accurate but too limited. It does not cover the background of the early colonies and the incorporation of English law into colonial law. Nor does it address the inherent right to bear arms recognized on both sides of the ocean as a fundamental right that could not be taken away by the King.

GREEN, BECHER, GOVIELLO. AMERICAN TRADITION. P.35

This entry is inadequate with respect to discussion of rights incorporated from English law.

O'CONNOR, JOHN. EXPLORING AMERICAN HISTORY P. 147.

> Colonists believed strongly in the liberties or rights they enjoyed as British citizens. These included the right to trial by jury, like the Zenger trial and the right to approve taxes.

This entry is accurate, but does not address colonial times in depth and does not articulate the inherent right to bear arms which was brought to America from English law.

REMY, RICHARD. GOVERNMENT IN THE UNITED STATES. P. 35.

> In 1639 Puritans who had left Massachusetts Bay Colony to colonize Connecticut drew up America's first written constitution, called the Fundamental Orders of Connecticut...

This entry is accurate but limited in discussion of colonial times and laws, and the incorporation of English law, including the right to bear arms, into colonial law, along with other recognized rights.

SLAVE CODES

Early in the history of some colonies, free blacks retained the same rights as whites and even indentured or slave blacks enjoyed certain rights, which would later be denied to all blacks. As racially based slavery developed into a powerful economic and more settled social structure, blacks, free and slave, lost any and all such rights. Consequently by the 18th century, slaves had virtually no rights that whites had and had no hope of becoming anything other than a slave. Laws were created that granted separate rights on the basis of race. An early sign of such emerging restrictions and one of the most important legal distinctions was the passing of laws denying free blacks the right to keep arms. State legislation which prohibited the bearing of arms by Blacks was held to be constitutional due to the lack of citizen status of Afro-American slaves. Legislators simply ignored the fact that the United States Constitution and most state constitutions refer to the right to keep and bear arms as a right of the "people" rather than of the "citizen."[20]

LARAUS, MORRIS, SOVEL. CHALLENGE OF FREEDOM, 208.

> Together these laws formed the slave codes, the body of laws that governed slaves.

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[20] Stefan Tahmassebi, "Gun Control and Racism", 2:1 George Mason University Civil Rights Law Journal. 69-70 (Summer 1991).

This statement is incorrect in that the slave codes, especially the later southern ones, not only governed slaves but also restricted the rights of free Blacks in the slave states.

BAILEY AND KENNEDY. AMERICAN PAGEANT

> Laws began to appear on the books that formally decreed the iron conditions of black slavery. These earliest "slave codes" made blacks and their children the property for life of their white masters. Some colonies made it a crime event to teach a slave to read or write.

The same criticism applies here.

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 246.

> The prevailing prejudice exposed Northern free blacks to many forms of discrimination...they were barred from office-holding and jury duty...

It is true that in the antebellum North there existed in the white community a strong sense of racial animosity toward blacks arising out of economic competition between whites and blacks and the physical segregation of the races(which existed in the North to a much greater extent than in the South). It is also true that there were certain statutory limitations on the freedom of blacks in the Antebellum North but rather there was a law applicable to all northern states that barred freed Blacks from office holding and jury duty is doubtful.

BOYER, PAUL. THE ENDURING VISION. P. 86.

> But white apprehension ran high, expressed in a new slave code that would remain essentially in force until the Civil War. The code kept South Carolina slaves under constant surveillance. Further, it threatened masters with fines for not disciplining slaves and required legislative approval for manumission (freeing of individual slaves).

The statement is wrong in implying that the slave codes disappeared after the Civil War. The objectives of the slave codes and the measures taken thereunder continued to a large degree vis-a-vis the oppression of newly freed Blacks in the post Civil War South, as expressed by "black codes" passed by various southern legislatures after the Civil War.

CONLIN, JOSEPH. OUR LAND OUR TIME P. 80

> The majority was controlled by means of a harsh slave code or collection of laws that defined the blacks as chattels or tangible property.

See criticism to Civics Participating in our Democracy.

DAVIDSON AND LTYLE. THE UNITED STATES: A HISTORY OF THE REPUBLIC P. 69

> As the number of slaves in the South grew, colonial assemblies passed laws to regulate relations between slaves and their owners. Eventually, each colony had its own slave code. Regulations differed from place to place, but their purpose and effect were the same: to control slaves and prevent uprisings. Slave codes typically prohibited slaves from leaving a planation without written permission. A slave accused of a crime could be arrested, tried and condemned on the testimony of only one witness...

The first three sentences of the statement are excellent in that they reflect the fact that the slave codes and the restrictions on slaves reflected a gradual and continuing development. See criticism to Civics Participating in Our Democracy. However, this statement fails to mention the fact that some of the first and some of the most important of such regulations dealt with firearms restriction. See criticism to American Nation. The statement that "a slave accused of a crime could be arrested, tried and condemned on the testimony of only one witness," is ludicrous when cited as an example of restrictions on blacks. In fact, anybody can be "accused of a crime...arrested, tried and condemned on the testament of only one witness" even today.

DAVIS, JAMES. CIVICS PARTICIPATING IN OUR DEMOCRACY P. 72

> In no colony could women, servants or slaves vote. Colonial laws not only denied slaves the right to vote, but also treated them as property rather than as people.

The statement that colonial laws denied slaves the right to vote and treated them as property is incorrect in that, early on, in some colonies, free blacks retained the same rights as whites and even indentured or slave blacks enjoyed certain rights which would later be denied to all blacks. "And all, servant, slave or free, enjoyed rights that were later denied all Negroes in Virginia.[21]

DIBACCO, THOMAS. HISTORY IN THE UNITED STATES. P. 62

> Virginia, Maryland and then other colonies passed harsh slave codes...The slaves had no legal status, no recognition of any rights as people.

This statement is incorrect in that slave codes gradually developed to the extent described in this statement. See criticism to Civics Participating in Our Democracy.

DIVINE, ROBERT.AMERICA PAST AND PRESENT. 384.

> Free blacks, thought to be possible instigators of slave revolts were denied basic civil liberties and were the object of growing surveillance and harassment.

It is quite correct that free blacks were denied many civil liberties and were the object of surveillance and harassment because of the whites' fear of a black rebellion. Furthermore, whites in the slavery South feared that free blacks were a dangerous example to slave blacks. Often the firearms restrictions against free blacks were more sever than against slave blacks.[22]

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[21] Edmund S. Morgan. American Slavery-American Freedom: The Ordeal of Colonial Virginia. (1975), 154-155.

GARRATY, JOHN. THE AMERICAN NATION P. 40

> The South Carolina Negro Act of 1740 denied slaves "freedom of movement, freedom of assembly, freedom to raise their own food, to earn money, to learn to read English." The blacks had no civil rights under any of these codes and punishments were sickeningly severe.

The statement fails to include the fact that these statues also dealt with firearms restrictions. In regard to South Carolina: "in 1712, for instance, South Carolina passed "an act for the better ordering and governing of Negroes and Slaves" which included two articles particularly relating to firearm's ownership and blacks."[23]

NASH, GARY. THE AMERICAN PEOPLE P. 74

> Although slave codes severely restricted the lives of slaves, the possibility for family life increased as the southern colonies matured.

This statement seems to be quite incorrect in regard to the development of slaves codes. As noted in the criticism of The American Pageant, the development of the slave codes increasingly took away rights that had earlier existed, as, for instance, in regard to the validity of slave marriages.

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[22] Robert J.Cottrol and Raymond T. Diamond. "The Second Amendment: Toward a Afro-Americanist Interpretation, 80:2 Georgetown Law Journal (Dec. 1991), 336.

[23] Stephan Tahamssebi. "Gun Control and Racism, 2:1 George Mason University Civil Rights Law Journal 70 (citing 7 Statutes at Large of South Carolina, 353-354 (D.J. McCord ed. 1836-1873)).

O'CONNOR, JOHN. EXPLORING AMERICAN HISTORY P. 373

> Southern states passed new slave codes that were harsher than before. Some of the new laws made it a crime for groups of slaves to meet together unless there was a white person present. Other new laws aimed at preventing slaves from reading anti-slavery books.

This statement is correct in that it recognizes that the slave codes evolved into a much greater restriction of the rights of slaves. It fails to mention that this evolution of the slave codes also included growing restrictions on the rights of free blacks, and firearms restrictions on both free and slave blacks.

RITCHIE, DONALD HERITAGE OF FREEDOM P. 61

> The slave codes prohibited slaves to have weapons, to leave the plantation or to meet together. Free black people could not vote, testify against white people in court, assemble together in groups or carry weapons.

This is quite a good statement about the slave codes, in that it mentions the fact that free black people also had their rights severely restricted by the codes and that a major concern of the slave codes was the disarmament of both slave and free blacks.

PECK, IRA. AMERICAN ADVENTURES: PEOPLE MAKING HISTORY. P. 226

> Turner's uprising shook the whole South. After the rebellion, the Southern states passed even harsher laws against blacks, free or slave. They were forbidden to meet in groups, drink liquor, have guns, or travel freely.

This statement is correct in that Turner's rebellion spurred further restrictions upon free and slave blacks in the South.

RODEN, PHILIP. LIFE AND LIBERTY P. 244.

(Chart of 16 laws including: 3. Slaves were not allowed to have weapons.)

It is true that many slave codes forbid slaves from possessing firearms. Other slave codes forbid slaves from carrying firearms without their master's consent. Also, many slave codes forbid the carrying or possession of firearms by free blacks.

TODD AND CURTI. TRIUMPH OF THE AMERICAN NATION P. 70

> Beginning in the 1680's Southern slave owners tried to solve this problem by passing slave codes...To prevent slave revolts, the codes forbade slaves to meet together, leave the plantation, or own weapons.

The first slave code type statutes or statutes differentiating rights based on race, began even earlier than the 1680's.

STATE GOVERNMENT/CONSTITUTIONS

Four Revolutionary War era state constitutions had a specific guarantee to bear arms: Pennsylvania, Vermont, North Carolina and Massachusetts. The trend of early state constitutions, at time when Jefferson and Madison were still alive, was to guarantee the right to bear arms for defense of self and the state. The discussion of state government in the textbooks is often times incomplete or erroneous.

BOYER, PAUL. THE ENDURING VISION P. 187.

> By 1784 all state constitutions included explicit bills of rights that outlined certain freedoms beyond governmental control.

This is an erroneous claim. Connecticut did not adopt a state constitution until 1818. The Constitution of Georgia did not contain an explicitly bill of rights. For example, in Nunn v.

State, 1 Ga. (1 Kel.) 243 (1846), the Georgia Supreme Court utilized the federal Second Amendment to strike down a gun law. Georgia's constitution lacked a guarantee on arms, as well as guarantees to numerous other rights.

BRAGDON, HISTORY OF A FREE NATION P. 151

> Most state constitutions established state governments similar to the colonial governments they replaced...Although states discriminated against their residents on the basis of race, sex, religion and economic standing, most state constitutions included bills of rights spelling out the "unalienable rights" that government must recognize and protect. State bills of rights guaranteed trial by jury, freedom of the press, and other rights to be protected against tyranny.

The term "most" is ambiguous. As has been previously pointed out, a significant number of states lacked a bill of rights. In addition, four states had a guarantee to bear arms. Bragdon makes no mention of this.

CONLIN, JOSEPH. OUR LAND OUR TIME P. 158

> A bill of rights was a consistent feature in the state constitutions. It listed those rights that the people believed no government could take away. Most of the freedoms later written into the Bill of Rights of the United States Constitution can be found in one or another of the original state constitutions...and some of the southern states explicitly stated that their bills of rights did not apply to slaves or even to free blacks.

A bill of rights was not a consistent feature in the state constitutions. However, Conlin is accurate when he writes that most of the freedoms later written into the national bill of rights can be found in one form or another in the original state constitutions.

DAVIDSON AND LYTLE. THE UNITED STATES: A HISTORY OF THE REPUBLIC

P. 147.

> Most state constitutions sought to protect against an abuse of governmental powers by including a bill of rights. This guaranteed certain inalienable rights--rights that governments could never take away. A bill of rights typically protected freedom of the press, freedom of religion and the right to trial by jury.

"Most" is an ambiguous term. As has been previously pointed out, a number of states lacked a bill of rights. In addition, the authors fail to make mention of the right to bear arms.

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 167.

> Eight state constitutions contained specific "Declarations of Rights." The length and character of these lists varied, but in general, they affirmed three fundamental freedom: religion, speech and press. They protected citizens from unlawful searches and seizures; they upheld trial by jury.

Divine correctly notes that only eight state constitutions contained a specific declaration of rights.

GREEN, BECHER, GOVIELLO. AMERICAN TRADITION P. 81

> Almost every state constitution also included a bill of rights, a statement of the fundamental rights guaranteed to the people.

Green et al, claims that almost every state constitution included a bill of rights. "Almost" is not a precise term.

HARDY, RICHARD. GOVERNMENT IN AMERICA P. 43

> Remembering their difficulties with colonial rule, seven states included a bill of rights. These listed the basic civil liberties of citizens.

He indicates that seven states included a bill of rights. He fails to mention that four states (Vermont, Pennsylvania, North Carolina, and Massachusetts) guaranteed a right to bear arms.

MCCLENAGHAN, WILLIAM. MAGRUDER'S AMERICAN GOVERNMENT P. 37

> The first State constitutions differed, sometimes widely in detail. Yet they shared many common features...Civil liberties. Seven of the new documents contained a bill of rights, setting out the "unalienable rights" held by the people. In every state it was made clear that the sovereign people held certain rights that governments must at all times respect...
> p. 541. The first State documents differed in many ways..Seven constitutions began with a lengthy bill of rights. All of them made it clear that the sovereign people held "certain unalienable rights" that government must respect.

McClenaghan notes that seven states had a bill of rights. However, he fails to mention that four states guaranteed a right to bear arms.

TURNER, SWITZER, REDDEN. AMERICAN GOVERNMENT P. 36

> Each of the state constitutions also limited the power of its government. At the same time, there was so much concern about protecting the rights of the people that seven states included a special section called a bill of rights. These included the right to trial by jury, the right to worship as one chooses, and the right to speak out against the government.

Turner mentions that seven states included a bill of rights. He makes no mention of the guarantee to bear arms.

WILSON, JAMES. AMERICAN GOVERNMENT P. 17

> In 1776 eight states adopted written constitutions...Most had detailed bills of rights defining personal liberties and most placed the highest political power in the hands of elected representatives.

Wilson correctly notes that in 1776 eight states adopted written constitutions. However, in detailing the Pennsylvania constitution, he fails to explain that there was a provision for the right to bear arms.

GARRATY, JOHN. THE AMERICAN NATION P. 125

> The constitutions contained bills of rights (such as the one George Mason wrote for Virginia) protecting the people's civil liberties against all branches of the government.

This is also a misleading claim that state constitutions contained bills of rights protecting the people's civil liberties against all branches of government. Many early state constitutions did not have a bill of rights.

NASH, GARY. AMERICAN ODYSSEY P. 24

> One of the more radical groups wrote Pennsylvania's constitution. The men in this group replaced the governor with an executive committee which served the state's one house legislature. Pennsylvania's constitution ended property requirements of officeholders and voters and allowed all taxpaying males to vote. More than any other state, Pennsylvania allowed the common people of the state to share political power.

Nash claims that the Pennsylvania Constitution was the product of a radical group when it was actually rather progressive and influential.

NASH, GARY THE AMERICAN PEOPLE P. 204.

> The architects of Pennsylvania's constitution provided for a single, all powerful legislative house, its members elected annually, its debates open to the public. The bill of rights introducing the document guaranteed every citizen religious freedom, trial by jury and freedom of speech.

He makes no mention of the right to bear arms.

BILL OF RIGHTS

Carried to the American colonies was the attitude of Protestant Englishmen, in no mood to tolerate further repression of their right to bear arms, having recently experienced the loss of that privilege by both the common man and much of the governing class. That recent experience was perhaps the single greatest impetus to the republicans and anti-Federalists to insist that an individual right to keep and bear arms be inserted in the new Constitution.

Madison composed the Bill of Rights using ideas from the state bills of rights and other amendments suggested by state conventions. These sources included the right of the individual to possess arms, the fear of a professional army, the reliance on militia controlled by individual states, and the subordination of the military to civilian control.[24] During the pre-Bill of Rights debates in the Virginia Convention the right to keep and bear arms was dominated by the "anti-federalists" the body to be armed was the common contemporary understanding of the militia--the body of the people.[25]

Seven states whose state conventions were voting to adopt the federal Constitution offered either major or minority proposals on arms. These included Pennsylvania (the first to offer such a proposal), Massachusetts, New Hampshire, Virginia, New York, and North Carolina and Rhode Island. which, citing a lack of a bill of rights, initially did not ratify the

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[24] R.Shalope, "The Ideological Origins of the Second Amendment." Journal of American History, VOl. 69, No. 3 (Dec. 1982), 608.

[25] Thomas Moncure, "Who Is the Militia--The Virginia Ratification Convention and the Right to Bear Arms," Lincoln Law Review, Vol. XIX, NO. 1 (1990), 6-8.

Constitution and included a right to arms as a condition of ratification.[26]

According to Halbrook, "the Second Amendment was not intended only to protect the citizens having arms in their militia capacity. Rather it originated in part from Samuel Adams' proposal (which contained no militia clause) that Congress could not disarm any peaceable citizens."[27] Another conclusion Halbrook made:

> In recent years it has been suggested that the Second Amendment protects the "collective" right of states to maintain militia, while it does not protect the right of the "people" to keep and bear arms. If anyone entertained this notion in the period during which the Constitution and Bill of Rights were debated and ratified, it remains one of the most closely guarded secrets of the eighteenth century, for no known writing surviving from the period between 1787 and 1791 states such a thesis.[28]

BAILEY AND KENNEDY. AMERICAN PAGEANT P. 168.

> Adopted by the necessary number of states in 1791, the first 10 amendments to the Constitution popularly known as the Bill of Rights, safeguarded some of the most precious of American principles. Among these are protection for freedom of religion, speech and the press, the right to bear arms and to be tried by a jury...

The phrase "safeguarded some of the most precious American principles is misleading. The Bill of Rights was demanded by several states, at the time the Constitution was ratified, in order to (1) strictly limit the delegated powers of the federal union which the Constitution created; (2) prevent specific abuses which the colonial experience had taught them to fear and (3) to safeguard those rights which the Declaration of Independence said were "inalienable".

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[26] Robert Dowlut, "Federal and State Constitutional Guarantees to Arms," University of Dayton Law Review, Vol. XV, NO. 1 (Fall, 1989), 61-62.

[27] Stephen Halbrook, That Every Man Be Armed--The Evolution of A Constitutional Right, University of New Mexico Press, (1984), 79.

[28] Ibid., 83.

BAILEY AND KENNEDY A-17

> (Footnote: The courts with "militia in mind, have consistently held that the "right" to bear arms is a limited one.)

The courts have not "consistently held that the "right to bear arms is a limited one." In the case of Dred Scott v. Sanford, 60 U.S 393 (1856), Chief Justice Taney held that the slave, who is called "Dred Scott" in the suit was not entitled to his freedom. It was the intention of the Chief Justice not merely to deny "Dred Scott's" petition, but to uphold, and justify, the institution of slavery. In this light he implied that African-Americans, even if free, were not intended to be citizens. If they were citizens, he said, they would have the right "to keep and carry arms wherever they went." [29]

In the case of United States v. Cruikshank, 92 U.S. 542 (1876) the Supreme Court held that the Second Amendment was not incorporated, via the Fourteenth Amendment, into state constitutions. In Presser v. Illinois, 116 U.S. 252 (1886), The Court observed that the militia consists of "all citizens capable of bearing arms." and that the states could not "prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining public security and disable the people from performing their duty to the general government."

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[29] Dred Scott v. Sanford, 60 U.S. (1856) 420.

In the United States v. Miller, 307 U.S. 174 (1939), the Court held that Congress could impose a tax, and registration requirement on a short barrel (sawed off) shotgun because this did not seem to the Court to be a military style weapon of the sort suitable for one's militia duties.

BERKIN, CAROL. AMERICAN VOICES P. 152

> Many of the rights preserved by the first ten amendments have their roots in the Magna Carta of 1215 and in the principles established as "the rights of Englishmen" during the 1600's. For example, the First Amendment grants to Americans freedom of religion, speech, the press, peaceable assembly and petition. (ed) The people have the right to protect themselves by serving as armed citizens (militia) and Congress cannot stop them. However, Congress has restricted the possession of particular weapons. For example, private ownership of sawed-off shotguns, concealed weapons and machineguns is prohibited by federal laws.

This explanation is misleading. In the first place, none of the rights in the Bill of Rights are mentioned in the Magna Carta. The more immediate antecedent to the first ten amendments and the title given them, "the Bill of Rights" was the English Bill of Rights enacted in 1689, following the "glorious revolution." In fact, the English Bill of Rights as enacted in Parliament, included explicit provisions which recognized the right of protestant English subjects to keep private arms in order to be prepared to fulfill militia duty.

Congress has not prohibited the private ownership of sawed off shotguns, concealed weapons and machineguns. Short barrel (sawed off) shotguns, and machineguns are subject to a tax imposed by the National Firearms Act, 26 U.S.C. 5801, et. seq. and must be registered with the Secretary of Treasury. Congress has imposed no such tax, nor registration requirement upon "concealed weapons."

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 137

> Known as the Bill of Rights, the amendments protected freedom of religion, of speech and of the press and the rights to assemble, to petition the government, to bear arms...

What it states fairly represents the protection afforded by the Bill of Rights. However, this does very little to help the pupil to understand its origins, nor its full intent.

BOORSTIN AND KELLEY. A HISTORY OF THE UNITED STATES P. 119

> The new House of Representatives advised by Representative James Madison of Virginia, at once turned its attention to the first 10 amendments--the Bill of Rights.
> p. 844 The right to keep and bear arms was assured by the 2nd amendment.

It is misleading to say that the new House of Representatives was "advised" by James Madison. He was merely a member, although he was the member who introduced the Bill of Rights.[30]

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[30] It is interesting that Madison had opposed a bill of rights in the original draft of the Constitution. As a result the Commonwealth of Virginia refused to appoint him to the Senate. When he ran for the House of Representatives as attempt was made to change his district in order to prevent his election. He was only elected after promising to work for a bill of rights in Congress. (See Hardy. Origins and Development of the Second Amendment at 71, 72.)

BOYER, PAUL. THE ENDURING VISION P. 213

> The Bill of Rights made only one concession toward what would soon be termed states' rights. That sole exception was the Second Amendment ensuring the collective right of each state's populace to maintain a militia free of federal interference. The implications of this "right to keep and bear arms" were profoundly disturbing. Its prominence as the second of the ten amendments, moreover emphasized lingering fears that a powerful central government might degenerate into tyranny. In adopting the Second Amendment the nation's politicians were playing with fire, for it represented nothing less than an invitation to civil war.

The statement that only one concession toward states' rights, can only be read as an error. The Tenth Amendment, although not a "concession" reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The author makes an unusual comment on the adoption of the Second Amendment about the nation's politicians playing with fire. Clearly, the framers of the Constitution thought they would be playing with fire not to include this provision. Recall, in the Declaration of Independence, Jefferson's words:

> ...whenever any Form of Government becomes destructive of these Ends (i.e. to secure the natural rights of the governed) it is the Right of the People to alter or to abolish it.

BRAGDON. HISTORY OF A FREE NATION P. 204

> The purpose of this amendment is to guarantee states the right to keep a militia.
> p. 231 Although a majority in both the Senate and the House had supported ratification of the Constitution, the Anit-federalist minority insisted that Congress quickly provide the Bill of Rights promised during the ratification campaign. In his Inaugural address, Washington, also urged that careful attention be given to such demands. Finally in September 1789, after much debate, Congress proposed 12 amendments. Of these, 10

> were ratified by the states and added to the Constitution in 1791.

The authors claim that the purpose of the Second Amendment was to guarantee to the states the right to keep a militia. There is absolutely no historical support for this proposition. This view was not expressed in the Constitutional Convention during the debates over ratification in the state legislatures, nor in Congress during the debate over the Bill of Rights. There has been no judicial precedent which could be construed to support this proposition but there have been a number of cases which have either held the opposite or inferred the opposite in dictum.[31]

The authors claim that the "Anti-federalist minority (in Congress) provide the Bill of Rights promised during the ratification campaign." The Bill of Rights was promised because it was demanded by the states. The actual Bill was drafted by Madison. He selected eight rights, from a list of more than one hundred, to be given explicit protection.

BRANSON, MARGARET. AMERICA'S HERITAGE P. 129

> The first ten amendments to the Constitution that make up the Bill of Rights were adopted by the states in 1791...P. 630 The federal government must not interfere with the rights of states to arms and drill state militia. This amendment does not say that individual citizens have an absolute right to keep guns for their own person use. Congress has put limits on

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[31] See, e.g. English v. State, 35 Tex. 473 (1872); State v. Duke, 42 Tex. 455 (1875); People v. Zerillo, 219 Mich.635 (1922); Robertson v. Baldwin, 165 U.S. 275 (1897); Patsone v. Pennsylvania, 232 U.S. 138 (1914).

> owning sawed-off shotguns or carrying hidden weapons. States have the right to require citizens to get licenses for guns.

The Second Amendment, along with the rest of the Bill of Rights were offered by the Congress, for ratification, after several states insisted upon them during the ratification of the Constitution. Among the amendments which were demanded were several which protected the right to keep and bear arms. It was explicit in some of these proposals and implicit in all, given the context, that this was an individual right. Congress has put no limits upon "carrying hidden weapons." The author is mistaken.

CONLIN, JAMES. OUR LAND OUR TIME P. 188

> This guarantee, like others in the Bill of Rights is a limited right. It means more than the citizens' right to possess firearms. It protects their right and duty to serve in the armed forces. This amendment also prevents the national government from absolutely prohibiting the ownership of firearms by citizens. The federal government has, however, passed laws to exercise some control over the interstate commerce in guns.
>
> (p. 196 Chapter skills strategy lists the first five amendments but does not ask any questions about the second amendment.)

There is no historical evidence that anyone believed that a citizen had either a right or a duty to serve in the armed forces,except in the time of war. In fact, there is some evidence that the framers of the Constitution had reservations about the existence of an armed force. During the debate in the House of Representatives Elbridge Gerry warned against a standing army. The term "...well regulated militia..." is a term which originated with the Italian republican Niccolo Machiavelli which meant a militia made up of the whole body of the people with minimum control by the central government.[32]

DAVIDSON AND LYTLE. A HISTORY OF THE REPUBLIC P. 172

> ...The Second Amendment guarantees the right of the people to keep and bear arms.
> p; 885 This amendment guarantees the right of a state militia to keep weapons. Court have generally ruled that government can regulate the ownership of weapons by private citizens.

This is misleading. The militia which can keep and bear arms is the "...well regulated militia..." The authors also contend that "...the courts have generally ruled that government can regulate the ownership of weapons by private citizens. This is also misleading. [33]

DIBACCO, THOMAS. HISTORY OF THE UNITED STATES P. 126

> Of these amendments the first nine guarantee basic individual rights. They include freedom of religion, freedom of the press, the right to bear arms, the right to a jury trial and the right not to testify against oneself.

This entry is correct.

DAVIS, JAMES. CIVICS PARTICIPATING IN OUR DEMOCRACY P. 120

> For the purposes of maintaining a state militia, citizens may keep and bear arms. Congress has prohibited the possession of certain firearms, however such as sawed-off shotguns and machine guns.

Congress has not prohibited the private ownership of sawed of shotguns or machineguns. They are subject to a tax as stated previously.

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[32] N. Machiavelli, The Art of War, E. Farneworth transl. 1965, 41.

[33] ^See Dredd Scott v. Sanford, 60 U.S. 393 (1856), United States v. Cruikshank, 92 U.S. 542 (1876), Presser v. Illinois, 116 U.S. 252 (1886), and United States v. Miller, 307 U.S. 174 (1939).

> p. 136 The Second Amendment supports the right of citizens to "keep and bear arms" that is to own and carry weapons. In colonial America, the right to keep and use firearms had been important for a number of reasons. At that time, no police force, national army or national guard existed. Citizens in rural areas often had to protect themselves from Indian attacks. Later many colonists thought that they needed firearms to resist England's attempts to deny them their rights. Of course, without weapons the colonists could not have eventually rebelled against English rule. Following independence, each state maintained its own militia, which was important for security. In recent years, some people have argued that the right to own weapons is more appropriate for a frontier society than for today's urban society. Others believe that it is still an important right, although the government may have to make laws regulating the ownership and the use of guns.

The author attempts to give a balance, presenting both sides in the debate. However, it is not accurate to say that the side which supports the right to keep and bear arms also believes that "the government may have to make laws regulating the ownership and use of guns."

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 188

> The Bill of Rights protected the freedoms of assembly, speech, religion and the press; guaranteed speedy trial by an impartial jury; preserved the people's right to bear arms; and prohibited unreasonable searches.

The author's treatment of the contents of the Bill of Rights is abridged but fair as far as it goes. The pupils would be better served with a more adequate treatment.

FRAENKEL, JACK. CIVICS GOVERNMENT AND CITIZENSHIP P. 57

> The Second Amendment. This amendment was added to the Constitution in order to give states the right to keep a militia. A militia is a home guard. It is made up of people who volunteer to serve their state. When the Constitution was written, the states and the national government needed the militia for defense.

> p. 518. The federal government cannot deny the states the right to keep an armed militia.

In the first place it is wrong to say that the Constitution "gives" any right or power except to the federal union. The Second Amendment, like each amendment in the Bill of Rights, protects a right. A review of the debates concerning the adoption of the Bill of Rights and of the context in which the Bill was adopted, strongly incline one to the view that it protects the right of the people to form a militia, not the right of the states to keep a militia.

GARRATY, JOHN. THE AMERICAN NATION P. 152.

> The right of trial by jury was reaffirmed, the right to bear arms guaranteed.

This entry is accurate but very brief. There is no discussion of the rationale for the rights enumerated.

GREEN, BECHER, GOVIELLO. AMERICAN TRADITION P. 120

> After a conference between the House and Senate twelve amendments were submitted to the states. Ten of these, known as the Bill of Rights were eventually drafted. p. 104. The powers of the national government were further curtailed by the first ten amendments to the Constitution known as the Bill of Rights. These amendments gave Americans a set of guaranteed liberties. For example, the First Amendment protected freedom of religion, speech, press and peaceful assembly. The Eighth Amendment prohibited the use of cruel and unusual punishment and the fifth amendment guaranteed the right of due process of law.

It is misleading to speak of the Bill of Rights as "giving" any rights of the people. The Ninth and Tenth Amendments clearly indicate that these liberties were never the property of any government to give. The Bill of Rights protects the liberties of the people. There is also no historical or judicial evidence to support that the Second Amendment "...guarantees the right to organize state militia to bear arms."

HARDY. GOVERNMENT IN AMERICA P. 76

> The Second Amendment guarantees the states the right to have a militia and the people the right to "keep and bear arms."

This is misleading and based upon an ungrammatical reading of the Second Amendment. The militia clause in the Second Amendment is a subordinate clause; the subject of the sentence is "the right of the people." This right exists as a right, independent of the Constitution, but is protected because a "well regulated" militia is necessary to the security of a free state.

JORDON, THE AMERICANS P. 173

> A citizens's right to bear arms is related to the maintenance of a militia. Various restrictions have been placed on the right including the requirements of gun licenses and the restricted right to carry concealed weapons.

Again, this is misleading and based upon an ungrammatical reading of the Second Amendment.

LINDEN,GLENN LEGACY OF FREEDOM P. 153.

> Congress cannot take away a citizen's right to serve in a state militia and to bear arms.

This entry is misleading. It makes it appear that the right to bear arms is unequivocally linked to the alleged "right to serve in a state militia."

MCCLENAGHAN, WILLIAM. MAGRUDER'S AMERICAN GOVERNMENT P. 63

> Collectively, the first 10 amendments are known as the Bill of Rights. They set out the great constitutional guarantees of freedom of expression and belief, of freedom and security of the person and of fair and equal treatment before the law.

> p. 101. Remember these first 10 amendments were added to the Constitution in 1791 to meet one of the major objections to its ratification. Those amendments were originally intended as restrictions on the new National Government, not as limits on the already existing States. That remains the fact of the matter today. Take the 2nd Amendment to make the point here. It reads: A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. As a provision in the Bill of Rights this restriction applied only to the National Government. The States may and very often do, limit the right to keep and bear arms. They may require the registration of all or all of certain guns, forbid the carrying of concealed weapons, forbid the ownership of automatic weapons or semi-automatic weapons and so on.

The author states that the Second Amendment is a restriction which applied only to the Federal government. There is no suggestion that this position may be disputed. Yet most of the authority is on the other side.

NASH, GARY. AMERICAN ODYSSEY P. 30

> The Constitution now officially protected rights such as freedom of speech, religion, press and assembly.

This entry is accurate but deficient in addressing all of the rights guaranteed by the Bill of Rights, especially the right to bear arms, as well as the rationale behind the Bill of Rights.

NASH, GARY. THE AMERICAN PEOPLE P. 242

> These ten became the Bill of Rights. Among other things, they guaranteed freedom of speech, press and religion; pledged the right of trial by jury, the right to bear arms, and the right to due process of law...

This entry is accurate and although it doesn't contain the rationale, it is definitive of the kinds of rights guaranteed by the Bill of Rights.

O'CONNOR, JOHN. EXPLORING AMERICAN HISTORY P. 239

> James Madison proposed the first ten amendments to the Constitution called the Bill of Rights. These amendments guarantee every American the right to speak, write and worship freely in the United States. The Bill of Rights protects Americans from unreasonable search of their homes. It guards them against the taking of their belongings by the police or other government officials. The Bill of Rights forbids courts from making people give evidence or proof of wrongdoing, against themselves. It also promises every citizen a speedy and public trial and prohibits cruel and unusual punishment.

There does not appear to be any factual error.

REMY, RICHARD. GOVERNMENT IN THE UNITED STATES P. 71

> The Bill of Rights limits the power of government. Its basic purpose is to protect two kinds of rights: rights of individual liberty such as freedom of speech and rights of persons accused of crimes such as the right to trial by jury. Originally the Bill of Rights applied to the national government. When the Constitution was adopted, some states already had guarantees of basic rights in their constitutions. It seemed necessary to add similar limits to the new national government. Since then, nearly all the provisions of the Bill of Rights have been applied to the states through a series of Supreme Court decisions...
> p. 600 When the Constitution was adopted the Americans were distrustful of their new and distant national government. The Bill of Rights was intended to place certain limitations on the national government: to prevent it from controlling the press, restricting speech, influencing religion and limited other areas of personal liberty... The 2nd and 3rd Amendments were designed to protect citizens against a repetition of actions taken by the British. During colonial times, the British tried to take weapons away from the colonial militia--that is, the citizens' forces set up by the colonies. The British also sent soldiers to live in the colonists homes against their will. The 2nd Amendment is designed to prevent the national government from taking weapons away from a state militia or the National Guard as it is called today. This amendment does not prevent Congress from regulating the interstate sale of weapons. Nor does it apply to the states. States are free to regulate the use and sale of firearms as they see fit.

> p. 766 For the purpose of maintaining a militia (National Guard) the people may not be deprived of their right to own and keep weapons.

The authors state that the Second Amendment is designed to prevent the national government from taking weapons away from a state militia or National Guard. There is absolutely no evidence, historical, judicial or textual to support this thesis. There is a great deal of evidence against this position.[34] The National Guard is not the "...well regulated militia..." of the Constitution. It originated with Niccolo Machiavelli and was made up of the whole body of the people with minimum control by the central government.

The Congress has explicitly recognized the distinction between the organized militia (the National Guard) and the unorganized militia, 10 U.S.C. 311 (b). This distinction is clear in the Constitution. Article I Section 8, clause 16, grants to Congress the following power:

> To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

The states were recognized by the framers, as sovereign. The right to maintain an armed forces was recognized, then as now, to be an ineluctable attribute of sovereignty. Art. 1 sec.

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[34] See, e.g., English v. State, 35 Tex. 473 (1872); State v. Duke, 42 Tex. 455 (1875); People v. Zerillo, 219 Mich. 635 (1922); Robertson v. Baldwin, 165 U.S. 275 (1897); Patsone v. Pennsylvania, 232 U.S. 138 (1914).

8, clearly reserves control of the militia to the states.

RITCHIE, DONALD, HERITAGE OF FREEDOM P. 154

> The purpose of this amendment is to guarantee states the right to keep a militia or National Guard. The courts have generally ruled that this amendment does not restrict the power of the government to regulate private ownership of weapons.

This entry is accurate in part, but misleading in part as to the blanket statement that "the courts have generally ruled that the Second Amendment does not restrict the power of the government to regulate private ownership of weapons." This is overly broad and leaves the reader with the impression that unlimited gun control is not only acceptable, but unchallengeable. The entry also misleads by implying that the right of a state to maintain a militia or national guard is somehow linked to the right to bear arms which impliedly cannot stand apart from militia considerations.

RODEN, PHILIP. LIFE AND LIBERTY P. 92

> A Bill of Rights is a list of rights that a government must protect. All states protected the right to free speech, a free press, and religious freedom. They also protected the right to a jury trial and the right of people to assemble or meet together.
>
> p. 142. The Second Amendment guarantees the right of the people "to keep and bear arms." This means at least that the people may protect themselves by forming a militia. People disagree as to whether it also means Congress cannot make it illegal to own pistols.
>
> p. 165. The people have the right to protect themselves by serving as armed citizens (militia) and Congress cannot stop them. However Congress has restricted possession of particular weapons such as sawed-off shotguns, concealed weapons and machine guns.

This entry is inaccurate in its phraseology. The Bill of

Rights is not a list of rights "a government" must protect, it is an articulation of rights guaranteed to every American national which must be protected by the federal government. Again Congress has not restricted the possession of these weapons.

PECK, IRA. AMERICAN ADVENTURES: PEOPLE MAKING HISTORY P. 162.

> These 10 amendments make up the Bill of Rights. Some of them do not seem as important today as they once. did. For example, the Third Amendment says that soldiers cannot be put up in a private home without the owner's consent...
> p. 827 (ed). The states have the right to keep armed militia for protection.

This entry is misleading as to the importance and impact of the Bill of Rights. It also fails to address the rationale and importance of the Bill of Rights. It makes no reference to the right to bear arms. It merely addresses a right to maintain a militia--and by implication--a right to bear arms that is impliedly tied to the militia.

STEPHENSON, GRIER. GOVERNMENT P. A-12

> A right of self-defense assured the states of a ready force for local militia (the precursor's to today's national guard.)

This entry speaks only of a militia for a state's self-defense. By implication it suggest that the right to bear arms is tied to the maintenance of a militia. This is not accurate.

TODD AND CURTI. THE TRIUMPH OF THE AMERICAN NATION P. 180

> Among the guarantees of liberty in the Bill of Rights, several are especially important. The First Amendment guarantees freedom of religion, speech, press, assembly and petition. The Fourth Amendment forbids unreasonable searches and seizures of any person's home. The 5, 6, and 8 amendments protects individuals from arbitrary arrest and punishment by the federal government.

> p. 202 The purpose of the amendment was to prevent Congress from denying states the right to have a militia (or National Guard) of armed citizens. It also protected American's right to keep weapons in order to resist a tyrannical government. However, Congress and many states have regulated the ownership and use of weapons by citizens through gun control legislation.

The authors state that the Fifth, Sixth and Eighth Amendments are restrictions upon the Federal Government. This is misleading. In the Fifth Amendment, only the grand jury clause has not been incorporated, Hurtado v. California, 110 U.S. 516 (1884). The double jeopardy clause, Benton v. Maryland, 395 U.S. 784 (1969) and the self-incrimination clause Mallory v. Hogan, 378 U.S. 1 (1964), have both been incorporated. In the Sixth Amendment, the Supreme Court has incorporated the speedy trial clause, the public trial clause, the impartial jury trial, the jury trial clause, the notice clause, the confrontation clause, the compulsory process clause, and the right to counsel clause. In the Eighth Amendment, the Supreme Court has incorporated the cruel and unusual punishment clause.

The authors claim that the purpose of the Second Amendment was to guarantee to the states the right to keep a militia. There is no support for this position.

TURNER, AMERICAN GOVERNMENTP. 60

> The Second Amendment guarantees us the right to keep weapons. It also prevents the national government from seizing weapons from state militia or the National Guard. The British tried to do this in colonial times and many feared that an unlimited government might try to do it again. This amendment does not prevent the states from regulating the sale and use of firearms. States may require weapons to be registered or may prohibit possession of machine guns and assault weapons.

Again the Second Amendment does not apply to the National Guard.

VER STEEG, CLARENCE. AMERICAN SPIRIT: A HISTORY OF THE AMERICAN PEOPLE P. 192

> Chart 2. The right to keep and carry firearms for self protection. The ten amendments that were ratified became known as the Bill of Rights. They went into effect in 1791.

This does mention the right to bear arms but there is no explanation of the Bill of Rights and the reasons for their guarantee.

WILSON, JAMES. AMERICAN GOVERNMENT P. 34

> Chart amendments grouped:
> 1) Protection afforded citizens to participate in the political process
> 2) protection against arbitrary police and court action
> 3) protection of states' rights and unnamed rights of people
> 4) other amendments (Second Amendment is here)
>
> A-16. (Right to bear arms) A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

This entry is accurate but highly deficient in any explanation of the rationale of the Bill of Rights. The description of the Second Amendment is tied to the militia. There is no explanation of distinctions between militia and the independent right to bear arms.

BLACK CODES

Black Codes consisted of legislation passed in former confederate states in 1865 and 1866, which attempted to affect the status of Negroes recently freed through the abolition of slavery. They were not a separate group of codes specifically placed in the state's statutes as an organized piece of legislation, but rather, they were interspersed among the state's laws and statues which dealt with vagrancy, apprenticeship, penalties for crimes, property rights, and the like.

Certain criminal conduct was only applicable to blacks, such as blacks could not own firearms. If any firearms were found, they were often turned over to the Ku Klux Klan or the militia. In turn, there was no way that blacks could defend themselves against official--as well as private harassment--such as Ku Klux Klan, since they were disarmed.

The "black codes" varied among the states, the most restrictive being found in Mississippi and South Carolina, where the black population largely outnumbered the white. From the North's view, the codes were an attempt to revive slavery and many Northern Republicans were dismayed that President Johnson did not obstruct the Southern States from legislating black codes, contending that these were matters internal to the sovereignty of the separate states. As a result the Civil Rights Act of 1866 was passed to implement the Thirteenth Amendment outlawing slavery, de jure and de facto.

LARAUS. CHALLENGE OF FREEDOM P. 317

> All the former Confederate states except Tennessee had passed Black Codes. These were laws that restricted the rights of freedmen.

This discussion is overly general. It lacks specificity of what the codes did to affect the lives of freedmen, i.e. the Southern Negroes. There is no discussion of the denial of the right to bear arms in the case of Negroes.

BAILEY AND KENNEDY. THE AMERICAN PAGEANT P. 484.

> Among the first acts of the new Southern regimes sanctioned by Johnson was the passage of the iron toothed Black Codes...All the Codes forbade a black to serve on a jury, some were barred from renting or leasing land.

The quote is accurate in a sense, but limited. There is no mention of gun control among many other "iron toothed" aspects of the highly restrictive codes which often left the black less well off than he may have been before the reconstruction.

BERKIN, CAROL. AMERICAN VOICES P. 237

> The new state governments passed Black Codes, laws designed to regulate the lives of former slaves much as the state statues had done before the war. They granted African Americans certain limited civil rights, but barred them from serving on juries, testifying against white people, and voting.
>
> p. 243 BLACK CODES IDENTIFYING ASSUMPTIONS SKILL ACTIVITY. Study the following examples of Black Codes from the state of South Carolina. Then answer the questions.
>
> a. persons of color may not be part of the militia of this state.
> b. No person of color shall migrate and reside in this state unless 20 days after his arrival, he shall post a bond swearing to his good behavior.
> c. Upon seeing a crime committed by a person of color, any person may arrest the offender and taken him before a magistrate.
> d. Marriage between a white person and a person of color shall be illegal and void.
> e. All persons of color who make contracts for service or labor shall be known as servants and those with whom they shall be known as masters.
> 1. What did the authors of these Black Codes assume or take for granted?

This entry is more complete in the sense of imparting some specifics to give the student an idea of how close to slavery the restrictions of the black codes were. But there is no mention of gun control in any of these examples. The test included in this entry assists the student's understanding of the reasons and effects of the black codes.

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 360

> These private acts of vengeance were accompanied in the public sphere, by the Black Codes passed by the legislature of the Southern states. These laws looked to many like the old slave codes, but were actually more like the laws governing free blacks in antebellum times..Interracial marriage was forbidden...

This entry is somewhat accurate and could be much more specific. Once again there is no mention of gun control.

BOORSTIN, DANIEL. HISTORY OF THE UNITED STATES. P. 311

> ...The laws strictly limited the freedom of blacks. They could not vote. They were not allowed to marry whites. In some states they could be witnesses only in trials involving other blacks.

This entry is correct in that the new found freedom of blacks was severely restricted by the black codes. The codes were far more extensive than indicated by the examples in this entry. There is no mention of the restriction of the right of blacks to own firearms in clear derogation of the Second Amendment.

BOYER, PAUL. THE ENDURING VISION P. 530

> Most important, all states took steps to ensure a landless, dependent black labor force...This goal was achieved through the "black codes" which replaced the slave codes, the state laws that had regulated

> slavery...Some codes established racial segregation in public places; most prohibited racial intermarriage, jury service by blacks and court testimony by blacks against white.

This entry contains more specifics and also furnishes the raison d'etre behind the black codes. But it is not as complete as it could be because it does not contain information about gun control.

BRAGDON, HISTORY OF A FREE NATION P. 482

> The new Southern state legislatures passed a series of laws known as "black codes" that severely limited the rights of blacks and made it plain that blacks were still to have a subordinate status in the South. State governments made no provision for black schools. In no Southern state were blacks permitted to vote, testify against whites, handle weapons or serve on juries...

This entry is more extensive and covers by example more of the severe restrictions that resulted from the black codes, but is a bit shy of the rationale behind the codes and the responses of radical Republicans to President Johnson's unwillingness to interfere with Southern States'decisionmaking in this area.

BRANSON, MARGARET. AMERICA'S HERITAGE P. 308.

> When the legislatures of the Southern states met for the first time they adopted "Black Codes". These laws were supposed to control the former slaves. Some of these laws would not let blacks gather in groups. Others said that blacks who quit their jobs before their contracts ended could be put in jail. In South Carolina laws said that blacks could do only farm or domestic work. Still other laws said that black children could be made to work without their parents' consent.

This entry is accurate and contains some good specifics but says nothing about gun control, which subjected the blacks to an expansive reign of harassment and terror.

CONLIN, JOSEPH. OUR LAND OUR TIME P. 408.

> More troubling were the black codes, adopted by the southern state governments, and of which Johnson approved. These collections of laws varied from state to state, but they had one thing in common. None granted freed people the rights of full citizenship...In no southern state were blacks allowed to bear arms or to vote.

This entry is accurate and while it does not address all of the aspects of the black codes, it does mention the restriction on the right to bear arms and the right to vote.

DAIVDSON AND LYTLE. THE UNITED STATES: A HISTORY OF THE REPUBLIC P. 382

> Although modeled on the old slave codes, the Black Codes did provide freedmen with certain basic rights...But the granting of a few select rights could not alter the fact that the Black Codes explicitly denied black citizens some of the most important civil rights. Blacks were not permitted to bear arms or to meet together after sunset...

This entry is somewhat accurate in that it mentions the restrictions on blacks bearing arms, but it is deficient in addressing the full extent and affect of these highly restrictive codes enacted to impose de facto slavery on newly freed blacks following the Civil War.

DIBACCO, THOMAS. HISTORY OF THE UNITED STATES P. 260

> The black codes were laws intended to stop the movement of freedmen and to return blacks to plantation labor.

This entry is accurate but entirely too succinct. It fails to address the full rationale of the black codes, and says nothing about the restrictions on the right to bear arms by blacks, among other things.

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 466.

> Republican uneasiness turned to disillusionment and anger when the state legislatures elected under the new constitutions proceeded to pass "Black Codes" subjected former slaves to a variety of special regulations and restrictions on their freedom...Blacks in some state were also prevented from testifying in court on the same basis as whites and were subject to a separate penal code.
> p. 473. The Black Codes of 1865 attempted to require separation of the races in public places and facilities; when most of the codes were set aside by federal authorities as violations of the Civil Rights Act of 1866, the same end was often achieved through private initiative and community pressure.

This entry is accurate and gives some additional insight to the consequences of the black codes and the disenchantment of some Republicans with President Johnson's apparent complicity in the legislating of these restrictive, racist laws. There is no mention of gun control in this entry.

GARRATY, JOHN. THE AMERICAN NATION P. 452

> Finally the so-called Black Codes enacted by southern government to control former slaves alarmed the North...However, blacks could not bear arms, be employed in occupations other than farming and domestic service or leave their jobs without forfeiting back pay.

This entry is accurate and addresses gun control among blacks, but is too succinct for any solid understanding of the meaning and effect of the codes.

GREEN, BECHER AND OVIELLO. AMERICAN TRADITION P. 276.

> The series of laws passed after the Civil War to deal with the freedmen were known as the black codes. These laws severely limited the rights of blacks. They could not testify against whites in court, serve on juries or handle weapons of any kind.

This entry is accurate, although limited in its examples, and the underlying reasons for the codes. It does address the restrictions on the right to bear arms, however.

JORDON, THE AMERICANS P. 388

> The black codes varied...At the same time however, blacks could not serve on juries, carry weapons testify against white or marry whites.

This entry is accurate but limited. It does mention the restriction on the right to bear arms by blacks, but doesn't address the rationale or consequences of the codes.

LINDEN, GLENN. LEGACY OF FREEDOM P. 338.

> Every southern state passed a series of black codes--laws that severely restricted the former slaves...Also blacks were forbidden to own land in certain areas and they were not allowed to bear arms.

This is very generalized and doesn't emphasize the basis for the black codes and their overall consequences. It does give the example of gun control.

NASH, GARY. AMERICAN ODYSSEY P. 108

> Johnson did nothing to prevent new southern state governments from passing black codes, laws that severely restricted the rights for newly freed slaves. For example, in Mississippi, black codes prohibited free blacks from renting farm land and stipulated that orphaned black children could be assigned to forced labor.

This entry gives some historical insight into the conduct of President Johnson and his influence in the passing of black codes by former confederate states, but lacks specificity (except for two examples) of the insidious nature and effect of the codes.

NASH, GARY. THE AMERICAN PEOPLE P. 545.

> The key to reestablishing white dominance were the "black codes" that state legislatures passed in the first year after the end of the war. Many of the codes granted freedmen the right to marry use and be used, testify in court and hold property...Some rights were

> denied, including racial intermarriage and the right to bear arms...

The entry is accurate to some degree but mostly inaccurate at the least and misleading at best with respect to the effect of the black codes. The specific examples misinform the reader in the context of what was allowed and not allowed to blacks under the codes. Also, while the entry does address briefly the denial of the right to bear arms, it doesn't examine the consequences.

O'CONNOR JOHN. EXPLORING AMERICAN HISTORY P. 418.

> The new Southern state governments passed harsh black codes. Black codes were laws that kept many important rights from the freedmen...African American could not vote, hold government offices or serve on juries. The new black codes also focused most freedmen to work as farm laborers.

This entry is accurate but incomplete in its defining of black codes and in its addressing of the rationale of the codes and their reaching consequences. Examples of restrictions do not include the denial of the right to bear arms for blacks.

PECK, IRA. AMERICAN ADVENTURES:PEOPLE MAKING HISTORY P. 376

> Southern whites felt that they had to control the ex-slaves. One by one, legislatures in Southern states began passing Black Codes. Under many of these codes, blacks could be arrested for almost any reason. They could not own guns or own property.

This entry mentions the denial of the right to bear arms and a few other specifics but does not elaborate on the insidious effect of black codes. It does mention the desire of many southern whites to "control ex-slaves" thereby imposing a restoration of de facto slavery.

TODD AND CURTI P. 452.

> Laws of this kind, known as "slave codes" had existed before the war. The new "black codes" which varied from state to state, contained many of the same provisions as the old slave codes... However in general, the codes denied blacks their basic civil rights. Mississippi, for example, using its old code, merely substituted the word "Negro" for "slave". Black southerners were forbidden to possess firearms unless licensed to do so...

This entry is accurate and more definitive than earlier entries in other texts. It does not fully address the black codes, but it does give good examples, including the restrictions on black's owning and possessing firearms.

RITCHIE, DONALD. HERITAGE OF FREEDOM P. 378

> All the new Southern legislatures therefore passed "black codes" to regulate the freed black people. Less harsh than the slave codes that had existed before the war, the black codes permitted black Southerners a few basic rights. They were allowed to own property, to marry among themselves, and to secure the protection of the laws. However, they were not allowed to serve on juries or to vote.

This entry is primarily accurate but misleading about the ownership of property which varied between the codes of the various Southern states. There also is no mention of the denial of the right to bear arms and its insidious effect on the black freedmen.

RODEN, PHILIP. LIFE AND LIBERTY P. 306.

> Also, many southern states had passed black codes much like those that had governed slaves before the war. They restricted the movement of freed slaves. In some towns, blacks were not allowed into town without written permission from their employer. A black person who had no job could be arrested for vagrancy. If he or she could not pay the fine, the person could be hired out to work for someone who could pay it. Blacks were also forbidden to testify against a white person in court.

This entry is accurate but deficient as to the rationale for the black codes and their long reaching effect. There is no mention of the denial of the right to bear arms to these new citizens.

CIVIL RIGHTS ACT OF 1866

A series of Civil War Amendments to the United States Constitution were ultimately accomplished to serve as a basis for a positive, comprehensive federal program defining fundamental civil rights protected against both state and private encroachment. The Act was aimed at outlawing "Black Codes" which restricted the movement, property rights, private relationships and occupations of blacks. The Act provided, among other things that all persons born in the United States were citizens thereof, and it endeavored to place members of all races on an equal basis as to their rights. Congress had before it an imposing body of evidence pointing to the mistreatment of Negroes by private individuals and unofficial groups. The Congress incorporated the elimination of all of this restrictive conduct into the proscriptions of the Civil Rights Act of 1866, including the abrogation of the denial of the right of Negroes to bear arms.

BAILEY AND KENNEDY. THE AMERICAN PAGEANT. 466

It conferred civil rights including citizenship.

This entry is inadequate. It neither explains the fundamental reasons underlying the Civil Rights Act of 1866 or its broad effect. It contains no mention of the right to bear arms recognized in Negroes as citizens.

BERKIN, CAROL. AMERICAN VOICES. 237

> The second was the Civil Rights Act of 1866 which defined all persons born in the United States (except Indians) as American citizens, guaranteeing them the same legal rights (except for the right to vote.)

This entry is somewhat generalized and is deficient in providing a meaningful statement of the rationale and effect of the 1866 Act. This entry contains no mention of the right to bear arms recognized in Negroes as citizens.

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 362

> The Civil Rights Bill was designed to enforce the 13th Amendment to the Constitution.

This entry is correct although the use of the words implement the Thirteenth Amendment is used instead of enforce. What is missing is the "whys and wherefor" of the Act.

BOORSTIN AND KELLEY. HISTORY OF THE UNITED STATES P. 313

> It allowed the federal government to intervene in a state's affairs to protect the rights of all its citizens.

This entry is accurate but brief.

BOYER, PAUL. THE ENDURING VISION P. 532.

> In March 1866 Congress passed a second measure proposed by Trumbull, a bill that made blacks U.S. citizens with the same civil rights as other citizens and gave the federal government the right to intervene in the states to ensure black rights in court.

This entry is accurate (except for the date of the Act which was April 1866 instead of March 1866), but the entry falls short of the total concepts embraced by the 1866 Act, including the right to bear arms guaranteed to Negroes as it is to all citizens under the Second Amendment.

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 467

> The second was a civil rights bill meant to nullify the black codes and guarantee to freedmen "full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens."

This entry is quite accurate, but succinct and not expositive of the scope and depth of the 1866 Act. No mention of the right to bear arms is included in that there are no specific examples of any rights contained in the entry.

GARRATY, JOHN. THE AMERICAN NATION P. 453.

> Congress then passed a Civil Rights Act that besides declaring specifically that blacks were citizens of the United States, denied the states the power to restrict their rights to testify in court, to make contracts for their labor and to hold property...

This is decidedly incomplete, not only in specifics, but in addressing the scope and depth of the Act and its definitive purpose. No mention, once again, as to the right to bear arms being guaranteed to Negroes as well as all citizens.

NASH, GARY. AMERICAN ODYSSEY P. 109.

> In 1867 Congress passed a Civil Rights Act that granted citizenship to African Americans and prohibited states from abridging the rights accompanying this citizenship.

This entry contains an interesting historical note, but adds nothing to the concepts of the 1866 Act and its long range effects. No mention of the right to bear arms.

PECK, IRA. AMERICAN ADVENTURES: PEOPLE MAKING HISTORY P. 391

> Congress passed the first Civil Rights Act today. It is the first piece of legislation designed to help the treatment of freed blacks in Southern states.

This entry is very general and fails in any position of the rationale and scope of the Act and its long range effects. There is no mention of the right to bear arms.

VER STEEG, CLARENCE. AMERICAN SPIRIT: A HISTORY OF THE AMERICAN PEOPLE

> In April 1866 Congress passed a civil rights act over President Johnson's veto. This act gave the freed blacks their rights as citizens. It also gave federal courts, rather than state and local courts the right to try civil rights cases.

This entry is more comprehensive than the other entries, although it too fails to articulate the full scope and depth of the Act, but it is accurate as far as it goes. There is no mention of the right to bear arms.

KU KLUX KLAN

The Ku Klux Klan was organized in Pulaski, Tennessee, in May 1866, by a group of young confederate veterans as a vehicle to recoup prestige lost by the Southern states through their reconstruction. Its potential for disciplining black freedmen who dared to move forward under Radical Reconstruction was soon apparent to the young Klansmen. The organization's principal purpose was to open the way for reassertion of the supremacy of the white race politically and socially.

Klansmen also intimidated carpetbaggers and Northern interlopers (scalawags) and influenced trials in the South along with being responsible for many burnings, shootings, drownings, floggings, and lynchings, during these trying times. When the Negroes fought back with firearms the Klansmen encouraged the passage of black codes and particularly the outlawing of the possession of firearms by Negroes. Any firearms confiscated from blacks would often be turned over to the Klan so it could continue its reign of terror and repression against unarmed, defenseless freedmen.

In 1871 the Ku Klux Klan Act was passed empowering the President to use federal troops and to suspend the writ of habeas corpus in an effort to abolish the "conspiracy" against the Federal Government in the South. The anti-Klan bill has references to the right to bear arms by "all citizens" for protection not only against the state militia but against local law enforcement agencies and against private individuals who sought to deprive freedmen of their newly obtained rights.

BAILEY AND KENNEDY. THE AMERICAN PAGEANT P. 492.

> A number of secret organizations mushroomed forth, the most notorious of which was the "Invisible Empire of the South" or Ku Klux Klan, founded in Tennessee in 1866...These stubborn souls who persisted in their "upstart" ways were flogged, mutilated or even murdered.

This entry is accurate but quite brief. No mention is made of the disarming of blacks through KKK intimidation and influence.

BERKIN, CAROL. AMERICAN VOICES P. 242

> In 1870 and 1871 Congress passed enforcement acts outlawing terrorist societies and authorizing the use of the army against them. After the arrest and trial of hundreds of Klansmen, most Klan activity ceased.

This entry is inaccurate. After anti-Klan Acts were passed, the Klan was slowed but did not die. Klan activity continued well into the 20th century.

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 372.

> In the spring of 1871 with the active support of President Grant, Congress enacted the strong Ku Klux Klan Act designed specifically to bring those who attacked black people into the federal courts.

This entry is somewhat accurate, but is so general as to leave the reader without a true appreciation of the Klan and the need for the anti-Klan Act of 1871. No mention is made of the denial of the right to bear arms by Negroes as a result of the Klan activity.

BOORSTIN AND KELLEY. HISTORY OF THE UNITED STATES P. 318.

> Klan members traveled the countryside, flogging, maiming and sometimes killing blacks who tried to vote or who in other ways presumed to be the white man's equal.

This entry is accurate but gives no history or insight into the Klan and its fundamental purposes--which included harassment of many whites as well as blacks. It does not address any of the gun control efforts by the Klan and implementation of the denial of the right of blacks to own firearms the same as any other citizen.

BOYER, PAUL. THE ENDURING VISION

> Two months later Congress passed the Third Enforcement Act of Ku Klux Klan Act, which strengthen the sanctions against those who prevented blacks from voting. It also empowered the president to use federal troops to enforce the law and to suspend the writ of habeas corpus in areas he declared in insurrection . . . . Continuing its retreat from Reconstruction, the Supreme Court in 1883 invalidated both the Civil Rights Act of 1875 and the Ku Klux Klan Act of 1875.

This entry is more encompassing as to the purpose of the anti-Klan Act, but still does not address the underlying reasons giving rise to the birth of the Klan or its influence on the ability of blacks to bear arms.

CONLIN, JOSEPH. OUR LAND OUR TIME P. 414.

> At first the Klansmen were content to frighten blacks...Soon the Klan became a terrorist organization beating and killing blacks.

This entry is very broad and addresses none of the rationale for the existence of the Klan nor the far reaching consequences of its terrorists acts in the context of denial of freedoms, including, but not limited to, the right to bear arms as a vehicle for resisting oppression. It also does not address the anti-Klan Acts that resulted from Klan activities.

DAVIDSON AND LYTLE. THE UNITED STATES: A HISTORY OF THE REPUBLIC. P.390.

> Whites formed secret organizations such as the Ku Klux Klan and the Knights of the White Camellia with the goal of ending Radical Republican rule in the South. The Klan burned houses of Republicans and whipped, shot or hung blacks and sympathetic whites.

This entry is accurate but incomplete as it fails to address the full rationale of the KKK and similar organizations, and the many restrictive efforts exerted including the denial of the right to bear arms by blacks to enable them to resist tyranny and oppression.

DIBACCO, THOMAS. HISTORY OF THE UNITED STATES P. 266

> The Klans's immediate goal was to control elections and to destroy the Republican party in the South. Beyond that, however, the Klan aimed to keep black people in a subordinate role.

This entry is accurate but deficient in an adequate explanation of the rationale for the Klan, its long range goals, and its methodology, particularly with respect to keeping guns out of the hands of blacks. Also it does not address the reasons giving rise to the anti-Klan Acts.

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 481.

> These "Ku Klux Klan" or "Force" acts made interference with voting rights a crime and established provisions for government supervision of elections. In addition the legislation empowered the President to call out troops and suspend the writ of habeas corpus to quell insurrection. In 1871-72 thousands of suspected Klansmen were arrested by the military or U.S. marshals.

This entry is accurate, except for the statistic that "thousands" of suspected Klansmen were arrested" which is unsupported by any reference to historical data resources. There is no mention of the activity of the Klan leading to the requirement for this type of law. It accurately portrays the role of the military and U.S. marshals. But there is no commentary on the breach of the Negroes right to bear arms as freedmen citizens.

GARRATY, JOHN. THE AMERICAN NATION P. 464.

> Congress struck at the Klan with three Force Acts (1870-71) which placed elections under federal jurisdiction and imposed fines and prison sentences on persons convicted of interfering with another citizens's exercise of the franchise.

This entry generalizes about the anti-Klan Acts but gives no insight as to their requirement or consequences. There is no discussion of the right to bear arms being denied to Negroes and its effect.

GREEN, BECHER AND OVIELLO, AMERICAN TRADITION.

> The Klan used threats, beatings and murder to keep freedmen and other Republicans from voting.

This entry is accurate but seriously deficient in explaining the Klan or its consequences giving rise to Anti-Klan Acts. There is no discussion of restriction on blacks bearing arms through Klan actions and influence.

JORDON, THE AMERICANS P. 395

> After a while the secret societies began burning black owned cabins and churches.

This entry is totally inadequate for any discussion of the Klan, its role and goals and the restrictions imposed by terror and death of freed blacks, including the control of weapons in the hands of blacks.

LINDEN, GLENN. LEGACY OF FREEDOM P. 351.

> Groups like the Ku Klux Klan left a legacy of hatred.

This entry is woefully inadequate for any purpose, much less an explanation of why and how the KKK left a legacy of hatred.

NASH, GARY. THE AMERICAN ODYSSEY P. 109

> The Enforcement Act of 1870 empowered federal authorities to prosecute anyone who violated the fourteenth or fifteenth amendments...At about the same time that Johnson was systematically undermining African Americans' efforts to obtain equality, white supremacist organizations such as the Ku Klux Klan began terrorizing blacks. These organizations used intimidation and violence to prevent blacks from voting and from holding positions of power.

This entry is accurate but rather general. It does not address that part of KKK intimidation and control of freedmen blacks in keeping them disarmed.

NASH, GARY. THE AMERICAN PEOPLE P. 560

> The Ku Klux Klan was only one of several secret organizations that used force against black and white Republicans to drive them from power...Three Force

> Acts, passed in 1870 and 1871, gave the president strong powers to used federal supervisors to make sure that citizens were not prevented from voting by force or fraud. The third act, known as the Ku Klux Klan Act declared illegal secret organizations that used disguise and coercion to deprive others of equal protection of the laws.

This entry has more substance and aids in the understanding of the effect the KKK was having on both blacks and whites, and why the anti-Klan Acts were necessary. No mention of the denial of the right to bear arms. Also they having incorrectly called the acts "Force Acts" instead of "Enforcement" acts.

O'CONNOR, JOHN. EXPLORING AMERICAN HISTORY P. 421.

> ...They were aided by secret groups like the Ku Klux Klan which used terror and violence against African Americans to keep them from voting.

This entry is woefully inadequate. There is no in depth discussion of the Klan, its roles and goals and the consequences on blacks, including the implementation of restrictions on the right to bear arms to resist tyranny and oppression.

PECK, IRA. AMERICAN ADVENTURES: PEOPLE MAKING HISTORY P. 391.

> But most alarming of all developments in the South is the formation of the Ku Klux Klan in Tennessee. This group was organized to block the federal government's efforts on behalf of Southern blacks. Hooded nightriders travel the countryside terrorizing black people. Arson, beatings and murder are their weapons.

This entry is more expository, but inaccurate in the sense that the KKK exerted violence on some whites as well as blacks, although their primary target was black freedmen. There was no discussion of gun-control being exerted against blacks.

RITCHIE, DONALD. HERITAGE OF FREEDOM P. 387.

> The Klan was quite willing to use violence, including

> whipping and murder to back up its threats...In 1870 and 1871 Congress passed Force Acts to use federal troops to protect the freedmen's right to vote and to prosecute those who tried to keep them from voting.

This entry is accurate, but overly general. There is not mention of gun control in the KKK tactics.

RODEN, PHILIP. LIFE AND LIBERTY P. 309.

> The Ku Klux Klan became the best-known terrorist group. Organized in Tennessee in 1865 the Klan moved throughout the South to restore what its members called "law and order."

This entry is inaccurate as to the date of the founding of the Klan. It was founded in 1866 and formally organized in 1867. It is very generalized without any substance.

TODD AND CURTI. TRIUMPH OF THE AMERICAN NATION P. 452.

> These secret organizations tried to frighten black southern and then white sympathizers into staying out of politics...

This entry is woefully inadequate to give the student a feel for the meaning and consequences of the Klan and other secret organizations.

VER STEEG. CLARENCE. AMERICAN SPIRIT: A HISTORY OF THE AMERICAN PEOPLE P. 436.

> Perhaps the most serious threat of lawlessness came with the appearance of the Ku Klux Klan and other secret groups in 1865. Through such bands southern whites hoped to regain control of their states. They used force or the threat of force against black voters. In 1871 alone 163 blacks were murdered in one Florida county. Some 300 blacks were murdered around New Orleans.

This entry is accurate except for the homicide statistics which are not documented. The date of the inception of the Klan (herein 1865) is in error (should be 1866).

THE FOURTEENTH AMENDMENT

The first 10 amendments to the Constitution, adopted in 1791, constituted the Bill of Rights. The principal purpose of the Bill of Rights was solely to protect the individual against the acts of the federal government. In 1833, Chief Justice John Marshall held in Barron v. Baltimore that the guarantees enumerated in the Bill of Rights were a limitation only on the federal government. The result was a lack of federal constitutional protection of the individual against the acts of state governments (other than a few individual rights guaranteed in the body of the Constitution proper.)

The post Civil War enactments of the 13th, 14th and 15th amendments were enacted specifically to bar discrimination by states against individuals, especially the newly freed slaves. The drafters of the 14th amendment intended that its Privileges and Immunities" clause would be the conduit by which these rights could be protected from interference by the states. Recent scholarship has also varified this. Representative James Wilson made it clear that he understood the "privileges and immunities of citizens of the United States" to include the guarantees of the amendments. His words show that he deemed all rights and freedoms in the Bill to be binding on state governments.[35]

Instead of the "Privileges and Immunities" clause, the "Due Process" clause of the 14th amendment became the means by which various rights found in the Bill of Rights were "incorporated" and made binding on the states. Under the process of "Selective Incorporation" most of the principal guarantees of the Bill of Rights have been incorporated and made applicable to the states.[36]

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[35] Akhil Reed Amar, "The Bill of Rights and the Fourteenth Amendment', Yale Law Journal, Vol. 101, No. 6 (April 1992)1236.

BERKIN, CAROL. AMERICAN VOICES P. 238

> One of the most important changes ever made to the Constitution, the 14th amendment stated that all native-born or naturalized persons were citizens of the United States and their state.

This statement is correct. However the most important and most substantive section on the Fourteenth Amendment states that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." These three clauses (the privileges and immunities clause, the due process clause and the equal protection clause) of the Fourteenth Amendment have been the cornerstone of the development of constitutional law regarding individual rights, which may be found in or inferred from the Bill of Rights, being made applicable against state action.[37]

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 363.

The 14th Amendment proposed in April 1866 by the Joint

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[36] Stefan. B. Tahmassebi, "The Bill of Rights and the States" in the American Rifleman, (April 1991),22-23.

[37] Ibid., 22-23.

> Committee on Reconstruction was passed by Congress on June 19 and sent to the states for ratification.

See the criticism above for American Voices.

BOYER, PAUL. THE ENDURING VISION P. 532

> To protect blacks' rights, the amendment declared in its first clause that all persons born or naturalized in the United States were citizens of the nation and citizens of their states and that no state could abridge their rights without due process of law or deny them equal protection of the law.

The statement is correct in that eventually the due process clause of the Fourteenth Amendment became the vehicle through which certain Bill of Rights guarantees were incorporated against state action. However, the drafters of the Fourteenth Amendment actually intended the privileges and immunities clause to guarantee such rights against state action.[38]

BRANSON, MARGARET. AMERICA'S HERITAGE P. 309

> To get back into the Union, the Southern states had to ratify the 14th amendment. This gave citizenship to blacks. And it protected them from having their rights taken away by the states.

The first sentence of the statement is incorrect. The United States government's position was, in fact, that there had not been a legitimate secession from the Union by the Confederate states. The Reconstruction Act of March 2, 1867 returned the South to military rule and declared that after a former Confederate state had presented an acceptable state constitution to Congress and had ratified the Fourteenth Amendment, Congress would then admit that state's delegates to Congress. However, during said military rule or even during the "rebellion", the U.S. government considered the Southern states to be a part of the Union. The Fourteenth Amendment did not specifically give citizenship to "blacks" or protect them specifically in regard to rights; instead it states that "all persons born or naturalized in the United States...are citizens of the United States and of the State wherein they reside." (United States Constitution, Amendment 14, Section 1.) The privilege and immunities clause, due process clause and equal protection clause also are guaranteed to in regard to all "citizens" or "any person", including, but not limited to "blacks".

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[38] Tahmassebi, 22-23.

CONLIN, JOSEPH. OUR LAND OUR TIME P. 410.

> Once ratified the Fourteenth Amendment would invalidate the black codes...

This statement is correct in that one of the major purposes of the drafters of the Fourteenth Amendment was to strike down the black codes through the privilege and immunities clause. However, the Supreme Court subsequently refused to apply the privilege and immunities clause to such effect.[39]

DAVIS, JAMES. CIVICS PARTICIPATING IN OUR DEMOCRACY P. 154

> The 14th amendment, adopted in 1868 ensured citizenship for blacks.

The Fourteenth Amendment was not adopted in 1868. It was proposed in April of 1866 by the Joint Committee on Reconstruction, was passed by Congress on June 19, 1866, and was ratified on July 9, 1868. The rights guaranteed by the Fourteenth Amendment apply to all "citizens" (privileges and immunities clause) or to "any person" (equal protection and due process clauses) and are not restricted to "blacks." However, it is true that one of the main purposes of the drafters of the Fourteenth Amendment was the guaranteeing of the enfranchisement of blacks and the protection of blacks from oppression in the South.

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[39] Stefan B. Tahmassebi, "The Bill of Rights and the States," American Rifleman, (April 1991) 22-23.

DIBACCO, THOMAS. History in the United States p.

> The amendment nullified the Supreme Court Dred Scott decision. It also prohibited states from depriving "any person of life, liberty and property" without due process of law."

It is true that the drafters of the Fourteenth Amendment specifically resorted to a constitutional amendment because of their fear that a mere statute would be overruled or misinterpreted by a Supreme Court which had written the Dred Scott decision and that the amendment was in fact meant to nullify the Dred Scott decision. The statement mentions the due process clause; which did in effect, become the vehicle through which a process of selective incorporation, certain of the Bill of Rights guarantees were made effective against state action. The statement fails to mention the equal protection clause and the privileges and immunities clause, the latter of which the drafters intended to be the vehicle through which the Bill of Rights would be made effective against state action.

DIVINE, ROBERT. AMERICA PAST AND PRESENT P. 467

> This perhaps the most important of all our

> constitutional amendments, gave the federal government responsibility for guaranteeing equal rights under the law for all Americans.

The statement that the Fourteenth Amendment is "the most important" amendment may be an oversell. The Fourteenth Amendment is quite important in regard to the guarantee of certain individual rights, especially vis-a-vis state action. The statement that it "gave the federal government responsibility for guaranteeing equal rights under the law for all Americans" is false. There is no requirement of a guarantee by the federal government of these rights in the Fourteenth Amendment. Although Section 5 (commonly referred to as the "enforcement clause") of the Fourteenth Amendment, states that "Congress shall have power, to enforce, by appropriate legislation, the provisions of this article." (United States Constitution, Amendment 14, Section 5). Thus the Congress has the "power," when it chooses to use such power, to enforce the Fourteenth Amendment through legislation but does not have a duty to do so.

FRAENKEL, JACK. CIVICS GOVERNMENT AND CITIZENSHIP P. 61

> The Fourteenth Amendment made black people citizens. It states that: All people born or naturalized in the United States and subject to its laws are citizens. No state may take away a citizen's Constitutional rights. The states must treat all citizens equally. The Fourteenth Amendment is important because it guarantees full Constitutional rights to all of us, no matter what our race, color, national background or religious belief.

The statement that "no state may take away a citizen's constitutional right" is a generalization. The privileges and immunities clause was intended by the drafters of the Fourteenth

Amendment to guarantee the rights contained in the Bill of Rights against state action. However, the privilege and immunities clause has been interpreted by the Supreme Court to protect only a very narrow range of "national citizenship rights". The due process clause instead, has become the vehicle through which various rights found in the Bill of Rights or inferred from the Bill of Rights, have been found to be protected against state action. The statement that "the states must treat all citizens equally" is also a generalization. The equal protection clause protects "suspect classes" against discriminatory action but does not guarantee that all citizens will be treated equally in all respects. The statement that "the Fourteenth Amendment is important because it guarantees full Constitutional rights to all of us no matter what our race, color, national background or religious belief,' is correct in that equal protection clause prevents discrimination upon race, color, national origin or religious belief but is incorrect in that the Fourteenth Amendment does not guarantee "full" constitutional rights, as the entire Bill of Rights has not been incorporated in the process of selective incorporation.[40]

GREEN, BECHER, GOVIELLO. AMERICAN TRADITION

> Fearing that the Civil Rights Act might be overturned in Court, Congress in June 1866 passed the 14th amendment to the Constitution. This amendment defined citizenship to include blacks.

It is true that the Congress passed the Fourteenth Amendment in June 1866 and that the drafters were largely concerned with a Supreme Court unwilling to enforce the Congress' legislation in this field. The statement is incorrect in that it states that the "amendment defines citizenship to include blacks". The Fourteenth Amendment did not specifically give citizenship rights to "blacks" but instead states that "all persons born or naturalized in the United States are citizens of the United States and of the state wherein they reside."(United States Constitution XIV Amendment, Section 1)

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[40] Tahmassebi, 22-23.

HARDY, RICHARD. GOVERNMENT IN AMERICA P. 194

> The Fourteenth Amendment passed in 1868, clearly defined citizenship. "All persons subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." The amendment promised all black Americans "equal protection of the laws."

The first sentence is correct. The second sentence, while mentioning the equal protection clause, fails to address the privileges and immunities clause and the due process clause.

GARRATY, JOHN. THE AMERICAN NATION P. 454

> ...Then it struck at discrimination like the Black Codes> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

This statement is correct in that one of the major purposes of the drafters of the Fourteenth Amendment was to strike down the black codes through the privilege and immunities clause. However, the Supreme Court subsequently refused to apply the privilege and immunities clause to such effect.

LINDEN, GLENN. LEGACY OF FREEDOM P. 341

> Slowly, the Fourteenth Amendment began to take shape, extending citizenship and equal protection of the law to ex-slaves and incorporating these rights into the Constitution...The Fourteenth Amendment guaranteed black Americans the right of citizenship.

It is true that the process of incorporation of the Bill of Rights under the due process clause was very slow to take shape, the interpretation or effect of the citizenship clause was never ambiguous, it was stated quite clearly in the Fourteenth Amendment and was understood and interpreted as such. See, also criticism of America's Heritage..

MCCLENAGHAN, WILLIAM. MAGRUDER'S AMERICAN GOVERNMENT P. 101.

> The Court extended the scope of the 14th Amendment's Due Process Clause even further in several cases in the 1960's to the point where today, it covers nearly all of the guarantees set out in the Bill of Rights. (Gives a lengthy explanation of 8, 6 and 5th amendments with cases which have the same coverage but never mention that the 2nd is not covered in this section.)

The provisions of the Bill of Rights that have not thus far been incorporated include the Third and Seventh Amendments, the right to grand jury indictment of the Fifth Amendment, the guarantee of freedom from excessive bail of the Eighth Amendment, and the right to keep and bear arms of the Second Amendment.

NASH, GARY. AMERICAN ODYSSEY P. 109

> In addition, passage of the fourteenth amendment in 1868 prevented states from denying rights and privileges to any U.S. citizen.

The statement that the Fourteenth Amendment was "passed" In 1868 is incorrect. The Fourteenth Amendment was proposed in April 1866 by the Joint Committee on Reconstruction, was passed by Congress on June 19, 1866, and was ratified on July 9, 1868.

The statement that the Amendment "prevented states from denying rights and privileges to any citizens" is correct in the sense that the drafters of the Fourteenth Amendment intended that the privileges and immunities clause would prevent the states from denying the rights guaranteed in the Bill of Rights to a U.S. citizen. However, subsequent Supreme Court decisions prevented this from happening.[41]

NASH, GARY. AMERICAN PEOPLE P. 548.

> A month later, Congress proposed to the states the ratification of the Fourteenth Amendment.

This statement, standing by itself does not seem to say anything.

O'CONNOR, JOHN. EXPLORING AMERICAN HISTORY P. 419

> The fourteenth amendment stated that freedmen were citizens who were protected by laws equally with all other citizens. The amendment also said that freedmen's rights to life and liberty and property could not be taken away by the states.

This statement is incorrect the Fourteenth Amendment does not mention "freedmen" but defines citizenship for "all persons." While mentioning the equal protection clause and due process clause, the statement fails to mention the privileges and immunities clause. The statement that "freedmen's rights to life, liberty and property cannot be taken away by the states" is untrue. In fact, one's life,liberty and property may be taken away by the states or the federal government, but not without due process of law.

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[41] Tahmassebi, 22-23.

PECK, IRA. AMERICAN ADVENTURES: PEOPLE MAKING HISTORY P. 380

> These laws included the Civil Rights Act and the Fourteenth Amendment, which made all black males full citizens, with equal protection under the law.

See criticism of America's Heritage in regard to citizenship. See criticism of Heritage of Freedom in regard to equal protection.

REMY, RICHARD. GOVERNMENT IN THE UNITED STATES P. 75

> The 14th Amendment (1868) protects rights of citizenship. It prevents states from depriving any person of life, liberty or property without "due process of law." And it states that all citizens have the right to equal protection of the law in all states. The original purpose of the amendment was to protect the legal rights of freed slaves and their descendants.
>
> p. 600. Since the Gitlow case, almost all of the other rights provided for in the first ten amendments have been incorporated and nationalized by the Supreme Court in various cases. The only exceptions are the 2nd, 3rd, and 10th Amendments.

It is true that the Fourteenth Amendment "protects rights of citizenship" vis-a-vis the privileges and immunities clause as interpreted by the Supreme Court. However, said "national citizenship rights" are not limited to a few rights of such as the right to interstate travel, the right to vote in national elections, etc.[42] The statement is correct in that the original purpose of the amendment was to protect the legal rights of the freedmen, although the rights guaranteed by the amendment are not limited only to such persons. It is true that most of the rights in the Bill of Rights have been incorporated by the Supreme Court and made effective against state action. However, the exceptions are greater than those listed in the statement. Provisions that have thus far not been incorporated, include the Third and Seventh Amendments, the right to grand jury indictment of the Fifth Amendment, the guarantee of freedom from excessive bail of the Eighth Amendment and the right to keep and bear arms of the Second Amendment.

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[42] Tahmassebi, 22.

RITCHIE, DONALD. HERITAGE OF FREEDOM P. 380

> The most important portion of the 14th amendment, ratified in 1868 is Sec. 1. It specifically overrode the Dred Scott decision by making all persons born in the United States citizens of the United States and of the states in which they live. It also forbids any state to deprive its citizens of equal rights under the law.

The statement is correct in stating the most important portion of the Fourteenth Amendment is Section 1. The drafters specifically resorted to a constitutional amendment because of their fear that a mere statute would be overridden or misinterpreted by a Supreme Court which had written the Dred Scott decision. However, the statement mentions the equal protection clause and fails to mention the privileges and immunities and due process clauses, when in fact the former was intended to be and the latter has become the vehicle through which the individual rights have been guaranteed against state action.

RODEN, PHILIP. LIFE AND LIBERTY P. 307.

> Amendment 14 guaranteed citizenship to blacks.

See criticism of America's Heritage.

STEPHENSON, D. GRIER. GOVERNMENT P. 48

> Significant as were the changes they eventually wrought in the life of the nation, even those amendments pale alongside the Fourteenth Amendment (1868) which fundamentally altered the relations between the national and state governments.

It is true that the Fourteenth Amendment "fundamentally altered the relations between the national and state governments," in that the Fourteenth Amendment guaranteed certain individual rights against state action and, furthermore , in that Section 5 gave Congress the power to enforce the Fourteenth Amendment through legislation. However, it should be noted that the expansion of federal jurisdiction and authority over the traditional jurisdiction of the states increased more through an expansive Supreme Court reading of the Commerce Clause in Article I, Section 8 of the United States Constitution.

VER STEEG, CLARENCE. AMERICAN SPIRIT A HISTORY OF THE AMERICAN PEOPLE P. 431

> The Reconstruction Congress added two other amendments to the Constitution. The first of these, the Fourteenth Amendment, was proposed in 1866 and ratified in 1868. Its first section defines citizenship and declared that no state may deprive any person of life, liberty or property without due process of law. In other words all men black or white should have the same legal rights. The second section of the amendment says that any state denying any of its male citizens the right to vote could have its representation in Congress reduced. Thus, if half a state's voters were black and all blacks were denied the vote, that state could lose half of its representatives in Congress. With this amendment, Congress warned the South not to deny the vote to blacks, though no state was ever punished under it.

To clarify the first sentence in the statement: the Reconstruction Congress passed three amendments to the Constitution, namely the Thirteenth, Fourteen and Fifteenth. The third and fourth sentences are incorrect in that they muddle the different clauses of Section 1 of the Fourteenth Amendment. The due process clause does not necessarily create equal legal rights, such statement would be more appropriate to the equal protection clause found in section 1 of the Fourteenth Amendment. The second section of the Amendment does not state that a denial of the right to male citizens to vote "could" result in a reduction of representation in Congress, but states, in fact that "the basis for representation shall be reduced." (U.S. Constitution, Amendment 14, Section,2.)

WILSON, JAMES. AMERICAN GOVERNMENT P. 521

> The Fourteenth Amendment was both the opportunity and the problem. . Adopted in 1868 it seemed to guarantee equal rights for all.

The first sentence of the statement is quite general and unexplained. However, it is true that the Fourteenth Amendment was an opportunity to make the individual rights guaranteed in the Bill of Rights effective against state action and that such opportunity was lost, to a great extent, in subsequent Supreme Court interpretations of the privilege immunities clause and due process clause. The statement that the amendment "guaranteed equal rights for all" is incorrect in that the Amendment provides for "equal protection of the laws" and not equal rights, for each person. Furthermore, said clause has been interpreted by the Supreme Court to provide a legal cause of action only for members of a "suspect class" and thus not to "all."

UNITED STATES V. CRUIKSHANK , 92 U.S. 542 (1876)

More than 100 persons were jointly indicted at the April Term, 1873 of the Circuit Court of the United States for the District of Louisiana. The indictment charged that the defendants had banded together with the intent to unlawfully and feloniously injure, oppress, threaten and intimidate two citizens of the United States of African descent and persons of color with the unlawful and felonious intent to prevent them from enjoying numerous rights, including the lawful right and privilege to peaceably assemble together with each other and with other citizens of the United States for a peaceable and lawful purpose; the right to keep and bear arms for a lawful purpose; the right to full and equal benefit of all laws and proceedings for the security of persons and property enjoyed by white citizens; and the right to vote. The court found that the counts in the indictment were defective, that the provisions in the Bill of Rights protect one from infringement by the national government, and that constitutional guarantees protect a person against infringement by the government and not against private infringement. The court simply stated that the second amendment protects against infringement by congress. Infringement by fellow citizens must be corrected by remedies provided by the state. There is no mention made about the militia, national guard or a collective right.

BLUM, JOHN. THE NATIONAL EXPERIENCE P. 383.

> In 1876 Chief Justice Morrison R. Waite, in United States v. Cruikshank decided that the Fourteenth Amendment "adds nothing to the rights of one citizen against another" and does not extend federal protection

> to other rights except when they are infringed by a state.

In the case of United States v. Cruikshank, 92 U.S. 542 (1876) the Supreme Court severely restricted the enforcement of the Fourteenth Amendment. It is misguided to place any reliance on this case for any legal principle. Much of the harm done by Cruikshank has been undone by subsequent decisions.

BOYER, PAUL. ENDURING VISION P.

> Another case U.S. v. Cruikshank, concerned the indictment under the 1870 Enforcement Act of white Louisiana after the Colfax massacre, a battle between armed whites and black state militiamen in which seventy blacks had surrendered, half of whom were then murdered. The Fourteenth Amendment contended that the Court prohibited only the encroachment on individual rights by a state, not by other individuals; ordinary crime was not the target of federal law. The decision threw out the indictments and with them, the effectiveness of the Enforcement Act.

The author's synopsis is adequate. However, this case can only be understood in the full context of the Reconstruction period.

NASH, GARY. AMERICAN ODYSSEY P. 113.

> The Supreme Court's 1876 ruling in U.S. v. Cruikshank overturned the Enforcement Act of 1870 and ruled that a state could not legally discriminate against African Americans but nonstate institutions and individuals could. Specifically, the court had overturned the convictions of three whites for their participation in a bloody massacre of African Americans on the ground that the three individuals did not specify that their actions were racially motivated.

CONCLUSIONS

None of the United States history texts and only one of the

United States government texts, Hardy's Government in the United States, described the English origins of the "moorings" of the right to keep and bear arms. When Virginians claimed their rights as Englishmen, they were referring to the English Bill of Rights, which included:

> That the raising or keeping a standing army within the kingdom in Time of Peace, unless it be with the consent of Parliament,is against the law.
>
> That the Subjects, which are Protestants, may have arms for their Defense suitable to their condition and as allowed by law.[43]

Thus the incorporation of English law into colonial law was forgotten in the texts.

There was also no reference made in the texts to the convention debate in which Virginians played a major part, concerning the fear of a standing army. Patrick Henry, concerned about who should have responsibility for arming the militia, the state or the federal government, said, "The great object is, that every man be armed. Every man who is able may have a gun."[44] Mason commented that the "militia is the natural strength and only safe and stable security of a free government."[45] A good primary source insert for students to learn about the concern of Mason might be:

> But when once a standing army is established in any

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[43] Thomas Moncure, "Who is the Militia: The Virginia Ratification Convention and the Right to Bear Arms", Lincoln Law Review Vol. XIX (1990), NO.1, 5.

[44] Moncure, 6.

[45] Moncure, 7.

> country, the people lose their liberty. When against a regular and disciplined army, yeomanry are the only defenses, yeomanry, unskilled and unarmed, what chance is there for preserving freedom?[46]

Thus both Henry and Mason were describing the militia as the body of the people. Unfortunately many of the textbooks referred to the militia as the organized national guard, which the founding fathers opposed.

The discussion of James Madison's original version of the Second Amendment and how it compared to the final compromise version agreed to by the First Congress was also left out of the textbooks. There was also no reference made to the fact that the founders wanted no restrictions on the people's right to keep arms. This was against the positions of such founding fathers as Thomas Jefferson, who wrote after Shay's rebellion, "What country can preserve its liberties, if its rulers are not warned from time to time that the people preserve the spirit of resistance? Let them take arms....The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure...".[47] Unfortunately, the original intent of Virginia's founding fathers concerning the Second Amendment has been lost in the textbooks used in Virginia today and other parts of the United States.

Regarding the discussion of the state constitutions there were not only omissions but numerous errors. Actually eight states had a Bill of Rights. Boyer as well as Garraty falsely reported that all state constitutions had a bill of rights. Conlin incorrectly reported that a bill of rights was a consistent feature. Bragdon, Davidson and Lytle, and Green reported that " most" states had a bill of rights. Hardy, McClenghan, and Turner listed seven states with a bill of rights. Nash went into a lengthy explanation of the Pennsylvania Bill of rights but did not explain that Pennsylvania was the first to put the right to bear arms into their state bill of rights. He also incorrectly labeled Pennsylvania as "radical." Even though Garraty in The American Nation mentions George Mason as the author of the Virginia Declaration of Rights, he does not describe the particular amendments, such as the right to keep and bear arms. Boyer in Enduring Vision, Divine in America Past and Present, Garraty in The American Nation, Nash in American Odyssey and American People gave protracted explanations of state constitutions, such as that of Pennsylvania, which was the earliest to provide for the right to keep and bear arms, but he did not discuss this right. A good primary source insert for students in reading the Pennsylvania constitution might be:

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[46] Rutland, Robert, The Papers of George Mason 1725-1792 Vol.3, Chapel Hill: University Of North Carolina Press, 1970, 1074.

[47] Leehan, Charles, Our Changing Constitution,. New York: Dodd Mead and Co. 1964, 36.

> That the people have a right to bear arms for the defense of themselves and their own state or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, a real danger of public injury from individuals.[48]

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[48] Dumbauld, Ed. The Bill of Rights and What It Means Today. Norman: Oklahoma Press, 1957.

Even though the slave codes were widely covered, there were many inaccuracies. The slave codes not only restricted the right of slaves but of free blacks too. Boyer was in error when he said that the slave codes disappeared after the Civil War. Davis was incorrect when he said that in no colony could women, servants or slaves vote. Nash was incorrect in saying that the possibility of family life increased. Todd and Curti were incorrect in saying that the slave codes began in the 1680's, when they began much earlier. Even though John Garraty took the opportunity to give a lengthy explanation of the South Carolina Code of 1740, he failed to mention its firearms restrictions. However, Divine correctly said that free blacks were denied rights. Ritchie, Peck and Roden were the only ones to mention that the slave codes restricted firearms. Nash in American People, correctly explained that, "by mid 1775 the Cape Fear region like most areas from Maryland to Georgia buzzed with rumors of slave uprisings. Importations of new slaves were barred and patrols were dispatched to disarm all blacks in the area."[49] Peck in American Adventures explained, "After the rebellion the Southern states passed even harsher laws against blacks free or slave. They were forbidden to meet in groups, drink liquor, have guns or travel freely."[50]

Virginia was one of the states which passed restrictive gun laws. The first recorded restrictive legislation came from Virginia in 1640, wherein blacks were excluded from owning a gun.[51] St. George Tucker, professor of law at the University of William and Mary and one of the judges of the General Court in Virginia, explained that in an act of 1680 slaves were prohibited from carrying any club, staff gun, or sword, offensive or defensive. This was re-enacted in 1792.[52]

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[49] Gary Nash, American People, Harper Collins Publishers 1990, 190.

[50] Ira Peck, American Adventures, Scholastic, 226.

There was much better coverage of the Black Codes but still little account of the discriminatory nature and what the codes did to freedmen as well as slaves. There also was little elaboration on the reasons for the codes as well as their effects. Boyer gave the best explanation in stating that "all states took steps to insure a landless, dependent black labor force."[53] Ritchie was totally incorrect when he said that the black codes permitted black southerners to own property, to marry and to secure the protection of the laws.[54] Several authors did correctly describe that the blacks were not allowed to bear arms under the Black Codes. These included Conlin, Davidson and Lytle, Garraty,Green Jordon, Linden, Nash, Peck, and Todd and Curti. According to Bragdon, in History of a Free Nation, "In no

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[51] Stefan Tahmassebi, "Gun Control and Racism" George Mason University Civil Rights Law Journal, Vol. 2 Summer 1991, No. 1, 69.

[52] St. George Tucker, A Dissertation on Slavery With a Proposal for the Gradual Abolition of It in the State of Virginia, Philadelphia, Matthew Carey Publisher, 1796, 20.

[53] Paul Boyer, The Enduring Vision, D.C. Heath, 530.

[54] Donald Ritchie, Heritage of Freedom, New York: Macmillian, 1990, 378.

Southern state were blacks permitted to vote, testify against whites, handle weapons or serve on juries."[55] Conlin described in Our Land Our Time,"In no Southern state were blacks allowed to bear arms or to vote."[56] Davidson and Lytle in The United States A History of the Republic stated that "Blacks were not permitted to bear arms or to meet together after sunset."[57] Jordon commented in the Americans, "The black codes varied....At the same time however, blacks could not serve on juries, carry weapons, testify against whites or marry whites."[58] Garraty in The American Nation explained, "However, blacks could not bear arms."[59] Nash in American People, "Some rights were denied, including racial intermarriages and the right to bear arms."[60] Peck in American Adventures explained, "Under many of these codes, blacks could be arrested for any reason. They could not own guns or own property."[61]

Discussions of the Bill of Rights and the interpretation of the Second Amendment contained the most errors. However, some of the texts eliminated discussion entirely. Some of the authors went against the ideals of the founding fathers, who believed in an absolute right of individuals to keep and bear arms, and claimed that the right of the people to keep and bear arms is for military purposes. Some of the authors made comments that went against historical fact such as Bailey who was incorrect when he said that the courts have consistently held that the right to bear arms is a limited one.[62] This mistake was also made by Davidson and Lytle, and Ritchie. Becker was incorrect in stating that the rights in the Bill of Rights came from the Magna Carta. Becker, Branson, Davis and Roden made an error in stating that Congress has prohibited the ownership of sawed-off shotguns, concealed weapons and machine guns. Short-barrel shotguns and machine guns, but not concealed weapons, are subject to a tax by the National Firearms Act of 1934. Bragdon, Ritchie, Stephenson, and Linden claimed that the sole purpose of the amendment was to guarantee states the right to keep a militia, rather than protect the individual right to keep and bear arms. Remy and Turner incorrectly say that the militia is the national guard. Hardy misreads the militia clause, a subordinate one, instead of recognizing that the subject is the right of the people to bear arms. Conlin reinterpreted the founder's intent when he said that "It means more than the citizen's right to possess firearms. It protects their right and duty to serve in the armed forces."[63] In a section called "Chapter Skills Strategy", students were asked to answer questions about the first five amendments but none about the second amendment.[64] Davidson and Lytle correctly focused on the "right of the people to keep and bear arms."[65] Dibacco in History of the United States also reinterprets the Second Amendment by saying "Amendment 2 guarantees that the federal government cannot deny states the right to enlist citizens in the militia and to provide them with training in the use of weapons."[66] Jordon incorrectly puts the emphasis on "A citizen's right to bear arms is related to the maintenance of a militia."[67] Berkin in American Voices stated, "The people have the right to protect themselves by serving as armed citizens (militia) and Congress cannot stop them. However, Congress has restricted the possession of particular weapons. For example, private ownership of sawed off shotguns, concealed weapons and machine guns is prohibited by federal laws."[68]This was in error. Machine guns and sawed off shotguns are taxed and registered, not prohibited. Federal law is silent on the subject of concealed weapons. Boyer in Enduring Vision made the most erroneous interpretation of the Second

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[55] Bragdon, History of A Free Nation, Glenco 1992, 482.

[56] Joseph Conlin, Our Land Our Time, Holt Rinhart and Winston, 1991, 408.

[57] Davidson and Lytle, United States A History of the Republic, Prentice Hall 1990, 382.

[58] Jordon.The Americans, McDougal LYtle 1990, 388.

[59] John Garraty, The American Nation, Harper Collins 1991, 152.

[60] Gary Nash, American People Harper Collins,1990, 545.

[61] Peck, American Adventures Scholastic, 376.

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[62] Thomas Bailey, The American Pageant, Lexington, Massachusetts: D.C. Heath, 1991,XIV.

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[63] Conlin, Our Land Our Time, 188.

[64] Ibid., 196.

[65] Davidson and Lytle, 172.

[66] Dibacco, 126.

[67] Jordon, 173.

[68] Berkin, American Voices, Scott Forseman 152.

Amendment by saying that the founders were playing with fire when they adopted the Second Amendment and that it was the only one concerned with states rights.

In the textbook coverage of the 1866 Civil Rights Act and the 14th Amendment and the Ku Klux Klan Act, the Second Amendment was forgotten. The textbooks gave little explanation of the reasons underlying the Civil Rights Act or its broad effects. Boyer gave the wrong date of the act (it was April 1866, not March.) The textbooks say that the act gave civil rights to blacks but focused more on voting rights. Even though the intent of the framers of the Fourteenth Amendment was to guarantee the right to keep and bear arms as a right and attribute of citizenship,[69] there is no mention of this right in any of the textbooks. There was also no mention of the need for the 14th amendment. Representative George Julian noted that the Civil Rights Act

> is pronounced by jurists and courts of the South. Florida made it a misdemeanor for colored men to carry weapons without a license to do so from a probated judge, and the punishment of the offense is whipping and the pillory. South Carolina has the same enactments....Cunning legislative devices are being invented in most of the states to restore slavery in fact.[70]

Keeping and bearing arms has been consistently part of the definition of "citizen" since the time of Aristotle, but that definition is not relayed in the textbooks.

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[69] Akhil Reed Amar, "The Bill of Rights and the Fourteenth Amendment, Yale Law Journal, Vol. 101, No. 6, April 1992, 1205-06.

[70] Halbrook, 114.

None of the authors explained that the Klan disarmed blacks. There was also little explanation of the why and how of the hatred. Boyer gave the best explanation of the purpose of the Ku Klux Klan Act. Berkin was incorrect in saying that the Klan died out. Roden gave the wrong date for the founding of the Klan. He said it was 1865 instead of 1866. Even though Berkin, Blum, Boyer, Divine, and Nash described the Ku Klux Klan Act they focused on only voting rights and did not include the right to bear arms. Section 8 of the Anti-Ku Klux Klan Act stated according to Representative Butler.

> Section 8 is intended to enforce the well known constitutional provision guaranteeing the right in the citizen to keep and bear arms.... This provision seemed to your committee to be necessary because they had observed that before these midnight marauders made attacks upon peaceful citizens, there were very many instances in the South where the sheriff of the county had preceded them and taken away the arms of their victims. This was especially noticeable in Union County, where all the negro population were disarmed by the sheriff only a few months ago under the order of the judge...; and then the sheriff having disarmed the citizens, the five hundred masked men rode at night and murdered and otherwise maltreated the ten persons who were there in jail in the county.[71]

Ritchie, Nash and Garraty incorrectly called the Enforcement Acts "Force Acts." Force Acts was a derogatory term applied by the Democrats. Again there is no reference in these Virginia approved textbooks concerning the actions Virginia took to disarm blacks. Virginia placed a prohibitive tax on the privilege of selling handguns to blacks.[72]

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[71] Tahmassebi, 73.

Three cases were chosen for analysis: United States v. Cruikshank (1876), Presser v. Illinois (1886) and United States v. Miller (1939). The only case described by any of the textbooks was United States v. Cruikshank (1876). Blum in The National Experience, Boyer in The Enduring Vision, and Nash in American Odyssey described the case.

None of the other cases are referred to by name. However, the following comments were made without reference to the particular case involved. Bailey in American Pageant said, "The courts with militia in mind have consistently held that the 'right' to bear arms is a limited one."[73] Berkins in America Voices said, "However Congress has restricted the possession of particular weapons. For example, private ownership of sawed off shotguns, concealed weapons and machine guns is prohibited by federal laws."[74] This is really referring to the National Firearms Act of 1934 although it is not a totally correct reference. This act put a high tax, background check and required registration of short barrelled shotguns and rifles and on machineguns but did not prohibit the ownership of them. It said nothing about concealed weapons. Conlin, in Our Land Our Time, said that "The federal government has however, passed laws to exercise some control over the interstate commerce in guns."[75] Similar errors were made by Davidson and Lytle who stated, "Courts have generally ruled that government can regulate the ownership of weapons by private citizens"[76] and by Jordon in The Americans, "Various restrictions have been placed on the right including the requirements of gun licenses and the restricted right to carry concealed weapons."[77] The authors do not make the distinction between state and federal laws.

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[72] Ibid., 152.

[73] Thomas Bailey, The American Pageant, Lexington, Massachusetts: D.C. Heath, 1991, A-14.

[74] Carol Berkin, American Voices, Scott Foreseman, 1992, 152.

SUMMARY

The scope of this study included the examination of twenty-four United States history and eight United States government textbooks used in the United States. The problem under investigation focused upon the portrayal of the Second Amendment in these textbooks. Three major questions guided this study: (1) How accurately and comprehensively did senior high United States history and United States government textbooks portray the Second Amendment and the circumstances of its adoption? (2) When the Second Amendment is included, how much emphasis is given to it compared to the other amendments? (3) How thoroughly and correctly do the textbooks portray the courts' interpretation of the Second Amendment. A series of sub-questions guided analysis of each event. (1) Did the author explain the legal, philosophical and colonial origins of the right to keep and bear arms? (2) Did the author list the Second Amendment in the description of the Bill of Rights? (3) Did the author describe the right to keep and bear arms in major events of history, such as the Slave Codes and the Black Codes? (4) Did the author describe major legislation dealing with the right to keep and bear arms, such as the Ku Klux Klan Act, Civil Rights Act of 1866, the National Firearms Act of 1934, and the Gun Control Act of 1968? The findings on each of those questions were as follows.

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[75] Conlin, 188.

[76] Davidson, 885.

[77] Jordon, 173.

How accurately and comprehensively do senior high school United States history and United States government textbooks portray the Second Amendment and the circumstances of its adoption? The answer was that the textbooks did not comprehensively describe the circumstances of its adoption. There was no background explanation of why and how the right to keep and bear arms became part of the Bill of Rights. There was no mention of the four states (Pennsylvania, North Carolina, Vermont and Massachusetts) that had the "right to bear arms" in their State Declaration of Rights and the four states (Virginia, Maryland, Delaware and New Hampshire) which had a "well regulated militia" clause in the State Declaration of Rights.

Did the author explain the legal, philosophical, and colonial origins of the right to keep and bear arms? Again there was no background information on how this right evolved from the English common law and was an important right in colonial

America. Only one government text described that this right came from the English Bill of Rights. One textbook incorrectly said the right came from the Magna Carta.

Did the author list the Second Amendment in the discussion of the Bill of Rights? Of the twenty-four United States history authors surveyed, seventeen of them listed the Second Amendment . A typical statement of an author not including the Second Amendment was "Collectively the first ten amendments are known as the Bill of Rights. They set out the great constitutional guarantees of freedom of expression and belief, of freedom of security of the person and of fair and equal treatment before the law."[78] An example of one which included the Second Amendment is "Among these are protection for freedom of religion, speech, and the press, the right to bear arms and to be tried by a jury."[79]

Did the author describe the right to keep and bear arms in major events of history such as the Slave Codes and the Black Codes? Of the twenty-four United States history texts surveyed five of them explained that the slave codes included a denial of the right to keep arms. Ten of the texts surveyed explained that as part of the black codes blacks were not allowed to keep arms.

Did the author describe major federal legislation dealing with the right to keep and bear arms such as the Ku Klux Klan Act, the Civil Rights Act of 1866, the National Firearms Act of 1934 and the Gun Control Act of 1968? Twenty of the twenty-four

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[78] McClengahan, 63.

[79] Bailey, 152.

United States history texts surveyed described the Klan but none explained that one of the tactics of the Klan was to disarm blacks. Also none of the texts referred to the Ku Klux Klan Act Section 8 which made this illegal. Although the Civil Rights Act of 1866 was described in nine of the twenty-four texts, none of the authors explained about protecting the Blacks right to bear arms. Only one text made specific reference to the National Firearms Act of 1934. Some texts misrepresented what the provisions of the act. The Act only imposed a tax and did not prohibit the possession of short barrel shot guns and machine guns. It also said nothing about concealed weapons. None of the authors described the Gun Control Act of 1968.

When the Second Amendment is included, how much emphasis is given to it compared to that afforded the other amendments? There was very little emphasis on the Second Amendment compared to the other amendments. The Second Amendment was described five times in the United States history books and four times in the United States government books. In comparison, the first amendment was described thirty-two times in the United States history books.

How thoroughly and correctly do the textbooks portray the courts' interpretation of the Second Amendment? This was very poorly covered. Of the three court cases selected, U.S. v. Miller, Presser v. Illinois, and U.S. v. Cruikshank, only U.S. v. Cruikshank was described three times and U.S. v. Milller once. There was also no mention of the disarming of blacks. Also several texts said that the courts have "consistently" or "generally" held positions which they had not.

RECOMMENDATIONS

The textbooks should have two to three authors with a few curriculum consultants and a number of social studies educators listed as reviewers. A legal scholar should be required as a consultant on all textbooks. The following additions would make a more accurate portrayal of the Second Amendment in the textbooks.

ENGLISH HERITAGE: The right to keep and bear arms is deeply rooted in English law. There should be a clear description of the origin of this right. The rights of Englishmen included the following from the English Bill of Rights:

> That the raising and keeping a standing army within the Kingdom in Time of peace, unless it be with the Consent of Parliament is against the Law. That the subjects which are Protestants may have arms for Defense suitable to the condition and as allowed by Law.[80]

COLONIAL GOVERNMENT: In the 18th century the militia was an important part of any community. An armed populace had helped the colonies win independence. There should be some discussion in the textbooks about how the founding fathers felt about this. Some important points to include are statements from the Henry and Mason. Patrick Henry said, "The great object is that everyman be armed. Everyone who is able may have a gun."[81]

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[80] Stephen Halbrook, That Every Man Be Armed, Alburquerque: University of New Mexico Press, 1984, 45.

[81] Thomas Moncure, "Who is the Militia, the Virginia Ratification Convention and the Right to Bear Arms," Lincoln Law Review, XIX (1990): 6.

George Mason said, "Militia is the natural strength and only safe and stable security of a free government."[82] There needs to be a clear emphasis of how the right to bear arms developed in colonial America. In order to understand how the Second Amendment evolved there should be a description of how the individual right to carry arms existed at the time the American colonies separated from the crown.

STATE GOVERNMENT: There should be a description of the state government bills of rights which included the right to bear arms. Pennsylvania was the first state to adopt the phrase "the people have the right to bear arms."[83]The intellectual and political history of the English colonists in America reflect the evolution of the Second Amendment to the United States Constitution from the early English common law, the experiences of the English Protestants being disarmed, and the enactment of the English Bill of Rights. When the textbook authors leave out these important steps, the history of the Second Amendment is truly "floating free" unmoored from its English and colonial heritage.

SLAVE CODES: The textbooks state that the Blacks were denied the right to own land and were denied equal rights in court. The texts should also explain that they were not allowed to keep and bear arms.

BILL OF RIGHTS. There should be an accurate discussion of the debates about the Second Amendment and the changes in the wording of that amendment. There also needs to be a clear understanding of the National Guard, and that it is not the unorganized militia. Also the texts need to explain that the founding fathers wanted to guarantee the Second Amendment as an individual right.

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[82] Ibid., 7.

[83] Halbrook, That Everyman Be Armed, 45.

14th AMENDMENT. There should be a discussion of antebellum denial of the right of blacks to bear arms because they were not citizens (declared in Dred Scott v. Sanford)[84]. The 14th Amendment gave them the right of citizenship, which included more than voting. Senator Jacob M. Howard, in introducing the 14th Amendment, referred to "the personal rights guaranteed and secured by the first eight amendments of the Constitution, such as freedom of speech and of the press....the right to keep and bear arms.[85]

1866 CIVIL RIGHTS ACT. There should be a discussion that the act enforced several fundamental civil rights and prohibited inequalities in the black codes which "prohibit any negro or mulatto from having fire arms."[86]

CONCLUSTION

The United States history and United States government texts, in covering the Second Amendment, omit important historical and judicial precedents which would give students an accurate portrayal of the evolution of the Second Amendment and subsequent judicial opinions. When the jurisprudence is covered, it is done so in general terms and there are misrepresentations of what the court said.

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[84] 60 U.S. (19 How) 393, 417, 450 (1857).

[85] Halbrook, Everyman, 112.

[86] Ibid., 109.

When James Madison wrote the amendments to the Constitution that formed the Bill of Rights, he did not do so in either a legislative or intellectual vacuum. These ideas came most commonly from the state bills of rights and other amendments suggested by state conventions. Yet, if one reads today's United States history or United States government textbooks, one gets the impression that it did develop in a vacuum.

I am not advocating that high school students need to be told they have a right to bear arms. I am advocating a textbook that correctly interprets what the founding fathers believed in and interprets the decisions of the courts without misinterpretation by the textbook authors.

The history of the Second Amendment is not only unmoored from its English and colonial heritage and forgotten in major historical events in the United States history and United States government textbooks, but that history has been set adrift in the textbooks, floundering in the political idealogies of the authors, unsubstantiated by historical fact or current jurisprudence.

APPENDIX

BAILEY AND KENNEDY
THE AMERICAN PAGEANT
D.C. HEATH 1991

SLAVE CODES P. 49

...Laws began to appear on the books that formally decreed the iron conditions of black slavery. These earliest "slave codes" made blacks and their children the property for life of their white masters. Some colonies made it a crime even to teach a slave to read or write.

COLONIAL GOVERNMENTS P. 80

The militia assembled periodically for "musters" which consisted of several days of drilling, liberally interspersed with merrymaking and eyeing the girls.

BILL OF RIGHTS P. 168

Adopted by the necessary number of states in 1791, the first 10 amendments to the Constitution popularly known as the Bill of Rights, safeguarded some of the most precious of American principles. Among these are protection for freedom of religion, speech and the press, the right to bear arms and to be tried by a jury...

A-17 AMENDMENT 2

The people may bear arms. (Actually bold in text). A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, (i.e. for military purposes) shall not be infringed. (footnote: The courts with "militia" in mind, have consistently held that the "right" to bear arms is a limited one.

BLACK CODES P. 484

Among the first acts of the new southern regimes sanctioned by Johnson was the passage of the iron toothed Black Codes...All the Codes forbade a black to serve on a jury, some were barred from renting or leasing land...

CIVIL RIGHTS ACT OF 1866

It conferred civil rights including citizenship.

KKK P. 492

A number of secret organization mushroomed forth, the most notorious of which was the "Invisible Empire of the South" or Ku Klux Klan, founded in Tennessee in 1866...These stubborn souls who persisted in their "upstart" ways were flogged, mutilated or even murdered.

Berkin, Carol
AMERICAN VOICES
SCOTT FORESMAN 1992

ENGLISH HERITAGE P. 39

The creation of the House of Burgesses assured English settlers that they would have all the legal privileges and protection known popularly as the "rights of Englishmen." THese rights had a long and proud history, beginning in 1215 when English Barons or nobleman forced King John to grant and abide by a charter of liberties called the Magna Carta.

STATE GOVERNMENT P. 69

These new constitutions differed from state to state. All of them, however, reflected Locke's idea of a social contract--government based on the consent of the people.

BILL OF RIGHTS P. 152

Many of the rights preserved by the first ten amendments have their roots in the Magna Carta of 1215 and in the principles established as "the rights of Englishmen" during the 1600's. For example, the First Amendment grants to Americans freedom of religion, speech, the press, peaceable assembly and petition.
(ed) The people have the right to protect themselves by serving as armed citizens (militia) and Congress cannot stop them. However, Congress has restricted the possession of particular weapons. For example, private ownership of sawed-off shotguns, concealed weapons and machineguns is prohibited by federal laws.

BLACK CODES P. 237

The new state governments passed Black Codes, laws designed to regulate the lives of former slaves much as the state statutes had done before the war. They granted African Americans certain limited civil rights, but barred them from serving on juries, testifying against white people, and voting.

p. 243 Black Codes Identifying assumptions skill activity.

Study the following examples of Black COdes from the state of South Carolina. Then answer the questions.

a. persons of color may not be part of the militia of this state.
b. No person of color shall migrate and reside in this state unless, within 20 days after his arrival, he shall post a bond swearing to his good behavior.
c. Upon seeing a crime committed by a person of color, any person may arrest the offender and take him before a magistrate.
d. Marriage between a white person and a person of color shall be illegal and void.
e. All persons of color who make contracts for service or labor shall be known as servants and those with whom they contract shall be known as masters
1. What did the authors of these Black COdes assume or take for granted?

CIVIL RIGHTS ACT OF 1866

The second was the Civil Rights Act of 1866 which defined all persons born in the United States (except Indians) as American citizens, guaranteeing them the same legal rights (except for the right to vote.)

14TH AMENDMENT P. 238

One of the most important changes ever made to the Constitution, the 14th amendment stated that all native-born or naturalized persons were citizens of the United States and of their state. (Gave a detailed explanation but did not say anything about the right to bear arms.)

KKK ACT P. 242

In 1870 and 1871 Congress passed enforcement acts outlawing terrorist societies and authorizing the use of the army against them. After the arrest and trial of hundreds of Klansman, most Klan activity ceased.

BLUM, JOHN
THE NATIONAL EXPERIENCE
HARCOURT BRACE JOVANOVICH 1989

BILL OF RIGHTS P. 137
Known as the Bill of Rights, the amendments protected freedom of religion, of speech and of the press and the rights to assemble, to petition the government, to bear arms..

SLAVE CODES P. 246
The prevailing prejudice exposed Northern free blacks to many forms of discrimination..they were barred from officeholdng and jury duty...

BLACK CODES P. 360
These private acts of vengeance were accompanied in the public sphere, by the Black Codes passed by the legislatures of the Southern states. These laws looked to many like the old slave codes, but were actually more like the laws governing free blacks in antebellum times....Interracial marriage was forbidden...

1866 CIVIL RIGHTS P. 362
The Civil Rights bill was designed to enforce the 13th Amendment to the Constitution...

14TH AMENDMENT P. 363
The Fourteenth Amendment proposed in April 1866 by the Joint Committee on Reconstruction was passed by Congress on June 19 and sent to the states for ratification...

KKK ACT P. 372
In the spring of 1871 with the active support of President Grant, Congress enacted the strong Ku Klux Klan Act designed specifically to bring those who attacked black people into the federal courts.

U.S. V. CRUIKSHANK P. 383
In 1876 Chief Justice Morrison R Waite, in United States v. Cruikshank decided that the Fourteenth Amendment "adds nothing to the rights of one citizen against another" and does not extend federal protection to other rights except when they are infringed by a state.

BOORSTIN AND KELLEY
A HISTORY OF THE UNITED STATES
PRENTICE HALL 1992

BILL OF RIGHTS P. 119

The new House of Representatives advised by Representative James Madison of Virginia, at once turned its attention to the first 10 amendments--the Bill of Rights.
p. 844 (ed) Origins. The right to keep and bear arms was assured by the 2nd amendment.

BLACK CODES P. 311

...The laws strictly limited the freedom of the blacks. They could not vote. They were not allowed to marry whites. In some states they could be witnesses only in trials involving other blacks.

CIVIL RIGHTS BILL P. 313

It allowed the federal government to intervene in a state's affairs to protect the rights of all its citizens.

KLAN P. 318

Klan members traveled the countryside, flogging, maiming and sometimes killing blacks who tried to vote or who in other ways presumed to be the white man's equal.

BOYER, PAUL
THE ENDURING VISION
D.C. HEATH AND CO. 1990

SLAVE CODES P. 86
But white apprehension ran high, expressed in a new slave code that would remain essentially in force until the Civil War. The code kept South Carolina slaves under constant surveillance. Further, it threatened masters with fines for not disciplining slaves and required legislative approval for manumission (freeing of individual slaves.)

COLONIAL GOVERNMENT P. 183
Most states granted important civil rights to free blacks during and after the Revolution. Free blacks had not participated in colonial elections in the North but they gained this privilege everywhere by 1780.

STATE GOVERNMENT P. 187
By 1784 all state constitutions included explicit bills of rights that outlined certain freedoms beyond governmental control. (Gives lengthy explanation of some states like Pennsylvania but does not discuss the right to bear arms.)

BILL OF RIGHTS P. 213
The Bill of Rights made only one concession toward what would soon be termed states' rights. That sole exception was the Second Amendment ensuring the collective right of each state's populace to maintain a militia free of federal interference. The implications of this "right to keep and bear arms" were profoundly disturbing. Its prominence as the second of the ten amendments, moreover emphasized lingering fears that a powerful central government might degenerate into tyranny. In adopting the Second Amendment the nation's politicians were playing with fire, for it represented noting less than an invitation to civil war.

BLACK CODES P. 530
Most important, all states took steps to ensure a landless, dependent black labor force...This goal was achieved through the "black codes" which replaced the slave codes , that state laws that had regulated slavery...Some codes established racial segregation in public places; most prohibited racial intermarriage, jury service by blacks, and court testimony by blacks against white...

1866 CIVIL RIGHTS P. 532
In March 1866 Congress passed a second measure proposed by Trumbull, a bill that made blacks U.S. citizens with the same civil rights as other citizens and gave the federal government the right to intervene in the states to ensure black rights in court.

14th AMENDMENT P. 532
To protect blacks' rights, the amendment declared in its first clause that all persons born or naturalized in the United States were citizens of the nation and citizens of their states and that no state could abridge their rights without due process of law or deny them equal protection of the law.

KKK ACT
Two months later Congress passed the Third Enforcement Act or Ku KLux Klan Act, which strengthened the sanctions against those who prevented blacks from voting. It also empowered the president to use federal troops to enforce the law and to suspend the write of habeas corpus in areas that he declared in insurrection. ...Continuing its retreat from Reconstruction the Supreme Court in 1883 invalidated both the Civil Rights act of 1875 and the Ku Klux Klan Act of 1871..

U.S. V. CRUIKSHANK
Another 1876 case U.S. v. Cruikshank, concerned the indictment under the 1870 Enforcement Act of white Louisiana after the Colfax massacre, a battle between armed whites and black state militiamen in which seventy blacks had surrendered, half of whom were then murdered. The Fourteenth Amendment contended the Court prohibited only the encroachment on individual rights by a state, not by other individuals; ordinary crime was not the target of federal law. The decision threw out the indictments and with them, the effectiveness of the Enforcement Act.

BRAGDON
HISTORY OF A FREE NATION
GLENCOE 1992

STATE GOVERNMENTS P. 151

Most state constitutions established state governments similar to the colonial governments they replaced...Although states discriminated against their residents on the basis of race, sex, religion, and economic standing, most state constitutions included bills of rights spelling out the "unalienable rights" that government must recognize and protect. State bills of rights guaranteed trial by jury, freedom of the press, and other rights to be protected against tyranny.

BILL OF RIGHTS P. 204

Amendment 2. The purpose of this amendment is to guarantee states the right to keep a militia.

p. 231 Although a majority in both the Senate and the House had supported ratification of the Constitution, the Anti-federalist minority insisted that Congress quickly provide the Bill of Rights promised during the ratification campaign. In his Inaugural address, Washington, also urged that careful attention be given to such demands. Finally in September 1789, after much debate, Congress proposed 12 amendments. Of these, 10 were ratified by the states and added to the Constitution in 1791.

BLACK CODES P. 482

The new Southern state legislatures passed a series of laws known as "black codes" that severely limited the rights of blacks and made it plain that blacks were still to have a subordinate status in the South. State governments made no provision for black schools. In no Southern state were blacks permitted to vote, testify against whites, handle weapons, or serve on juries...

MARGARET STIMMAN BRANSON
AMERICA'S HERITAGE
GINN AND COMPANY 1986

BILL OF RIGHTS P. 129
The first ten amendments to the Constitution that make up the Bill of Rights were adopted by the states in 1791... p. 630. The federal government must not interfere with the rights of states to arms and drill state militia. This amendment does not say that individual citizens have an absolute right to keep guns for their own personal use. Congress can and has put limits on owning sawed-off shotguns or carrying hidden weapons. States have the right to require citizens to get licenses for guns.

BLACK CODES P. 308
When the legislatures of the Southern states met for the first time, they adopted "Black Codes." These laws were supposed to control the former slaves. Some of these laws would not let blacks gather in groups. Others said that blacks who quit their jobs before their contracts ended could be put in jail. IN South Carolina laws said that blacks could do only farm or domestic work. Still other laws said that black children could be made to work without their parents' consent.

14th AMENDMENT P. 309
To get back into the Union, the Southern states had to ratify the 14th amendment. This gave citizenship to blacks. And it protected them from having their rights taken away by the states.

JOSEPH CONLIN
OUR LAND OUR TIME
HOLT, RINEHART AND WINSTON 1991

SLAVE CODES P. 80

The majority was controlled by means of a harsh slave code, or collection of laws that defined the blacks as chattels, or tangible property.

p. 329

The slave codes, southern laws governing the peculiar institution, denied civil rights and even most human rights to slaves.

STATE GOVERNMENTS P. 158

A bill of rights was a consistent feature in the state constitutions. It listed those rights that the people believed no government could take away. Most of the freedoms later written into the Bill of Rights of the United States Constitution can be found in one or another of the original state constitutions. ...and some of the southern states explicitly stated that their bills of rights did not apply to slaves or even to free blacks.

BILL OF RIGHTS P. 188

Amendment 2. This guarantee, like others in the Bill of Rights is a limited right. It means more than the citizens'right to possess firearms. It protects their right and duty to serve in the armed forces.

This amendment also prevents the national government from absolutely prohibiting the ownership of firearms by citizens. The federal government has, however, passed laws to exercise some control over the interstate commerce in guns.

(p. 196 Chapter skills strategy list the first five amendments but does not ask any questions about the second amendment.)

BLACK CODES P. 408

More troubling were the black codes, adopted by the southern state governments, and of which Johnson approved. These collections of laws varied from state to state, but they had one thing in common. None granted freed people the rights of full citizenship...In no southern state were blacks allowed to bear arms or to vote.

14th amendment p. 410

Once ratified the Fourteenth Amendment would invalidate the black codes...

KKK P. 414

At first the Klansmen were content to frighten blacks...Soon the Klan became a terrorist organization, beating and killing blacks...

DAVIDSON AND LYTLE
THE UNITED STATES: A HISTORY OF THE REPUBLIC
PRENTICE HALL 1990

COLONIAL GOVERNMENT P. 45

Accordingly in 1639 the settlers in the Hartford area adopted the Fundamental Orders of Connecticut as their new plan of government. It differed significantly from the Massachusetts system in basing colonial authority on self-government by the people rather than on the divine rule of kings. (No mention of right to bear arms. There follows a lengthy explanation of colonial governments with no mention of the right to bear arms in them either.)

SLAVE CODES P. 69

As the number of slaves in the South grew, colonial assemblies passed laws to regulate relations between slaves and their owners. Eventually, each colony had its own slave code. Regulations differed from place to place, but their purpose and effect were the same: to control slaves and prevent uprisings.

Slave codes typically prohibited slaves from leaving a planation without written permission. A slave accused of a crime could be arrested, tried and condemned on the testimony of only one witness...

STATE GOVERNMENTS P. 147

Most state constitutions sought to protect the people against an abuse of governmental powers by including a bill of rights. This guaranteed certain inalienable rights--rights that governments could never take away. A bill of rights typically protected freedom of the press, freedom of religion, and the right to trial by jury.

BILL OF RIGHTS P. 172

...The Second Amendment guarantees the right of the people to keep and bear arms.

p. 885 (ed.) This amendment guarantees the right of a state militia to keep weapons. Courts have generally ruled that government can regulate the ownership of weapons by private citizens.

BLACK CODES P. 382

...Although modeled on the old slave codes, the Black Codes did provide freedmen with certain basic rights. ...But the granting of a few select rights could not alter the fact that the Black Codes explicitly denied black citizens some of the most important civil rights. Blacks were not permitted to bear arms or to meet together after sunset...

KU KLUX KLAN P. 390

Whites formed secret organizations such as the Ku Klux Klan and the KNights of the White Camellia with the goal of ending Radical Republican rule in the South. The Klan burned houses of Republicans and whipped, shot or hung blacks and sympathetic whites...

THOMAS V. DIBACCO
HISTORY OF THE UNITED STATES
Houghton Mifflin 1990

COLONIAL GOVERNMENTS P. 56

The tradition of local self government was nurtured by the colonists' awareness of the "rights of Englishmen." These rights were first expressed in the Magna Carta of 1215. This document asserted the right to trial by a jury of one's peers, no imprisonment without trial and no taxation except by legal means.

SLAVE CODES P. 62

Virginia, Maryland and then other colonies passed harsh slave codes...THe slaves had no legal status, no recognition of any rights as people.

BILL OF RIGHTS P. 126

Of these amendments the first nine guarantee basic individual rights. They include freedom of religion, freedom of the press, the right to bear arms, the right to a jury trial and the right not to testify against oneself.

p. 154

Amendment 2 guarantees that the federal government cannot deny states the right to enlist citizens in the militia and to provide them with training in the use of weapons.

BLACK CODES P. 260

The black codes were laws intended to stop the movement of freed men and to return blacks to plantation labor.

14th AMENDMENT

The amendment nullified the Supreme Court Dred Scott decision. It also prohibited states from depriving "any person of life, liberty and property" without due process of law."

KU KLUX KLAN P. 266

The Klan's immediate goal was to control elections and to destroy the Republican party in the South. Beyond that, however the Klan aimed to keep black people in a subordinate role.

DIVINE, ROBERT
AMERICA PAST AND PRESENT
HARPER COLLINS PUBLISHERS 1991

ENGLISH HERITAGE P. 87
As part of the settlement, William and Mary accepted a Bill of Rights, a document stipulating the constitutional rights of all Englishmen.

STATE GOVERNMENTS P. 167
Eight state constitutions contained specific "Declarations of Rights." The length and character of these lists varied, but in general, they affirmed three fundamental freedoms: religion, speech and press. They protected citizens from unlawful searches and seizures; they upheld trial by jury.

BILL OF RIGHTS P. 188
The Bill of Rights protected the freedoms of assembly, speech, religion, and the press; guaranteed speedy trial by an impartial jury; preserved the people's right to bear arms; and prohibited unreasonable searches.

SLAVE CODES P. 384
Free blacks, thought to be possible instigators of slave revolts were denied basic civil liberties and were the object of growing surveillance and harassment.

BLACK CODES P. 466
Republican uneasiness turned to disillusionment and anger when the state legislatures elected under the new constitutions proceeded to pass "Black Codes" subjected former slaves to a variety of special regulations and restrictions on their freedom...Blacks in some states were also prevented from testifying in court on the same basis as whites and were subject to a separate penal code.

p. 473
The Black Codes of 1865 attempted to require separation of the races in public places and facilities; when most of the codes were set aside by federal authorities as violations of the Civil Rights Act of 1866, the same end was often achieved through private initiative and community pressure.

CIVIL RIGHTS ACT P. 467
The second was a civil rights bill meant to nullify the black codes and guarantee to freedmen "full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens."

14th AMENDMENT P 467
This perhaps the most important of all our constitutional amendments, gave the federal government responsibility for guaranteeing equal rights under the law for all Americans.

KKK ACT P. 481
These "Ku Klux Klan" or "Force" acts made interference with voting rights a crime and established provisions for government supervision of elections. In addition the legislation empowered the President to all out troops and suspend the writ of habeas corpus to quell insurrection. In 1871-72 thousands of suspected Klansmen were arrested by the military of U.S. marshals...

GARRATY, JOHN
THE AMERICAN NATION
HARPER COLLINS PUBLISHERS 1991

SLAVE CODES P. 40
The South Carolina Negro Act of 1740 denied slaves "freedom of movement, freedom of assembly, freedom to raise their own food, to earn money, to learn to read English." The blacks had no civil rights under any of these codes, and punishments were sickeningly severe.

STATE GOVERNMENTS P. 125
The constitutions contained bills of rights (such as the one George Mason wrote for Virginia) protecting the people's civil liberties against all branches of the government.

BILL OF RIGHTS P. 152
The right of trial by jury was reaffirmed, the right to bear arms guaranteed.

BLACK CODES P. 452
Finally the so-called Black Codes enacted to southern governments to control former slaves alarmed the North...However, blacks could not bear arms, be employed in occupations other than farming and domestic service or leave their jobs without forfeiting back pay.

CIVIL RIGHTS ACT P. 453
Congress then passed a Civil Rights Act that besides declaring specifically that blacks were citizens of the United States, denied the states the power to restrict their rights to testify in court, to make contracts for their labor and to hold property...

14th amendment p. 454
...Then it struck at discrimination like the Black Codes: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

KKK P. 464
Congress struck at the Klan with three Force Acts (1870-71), which placed elections under federal jurisdiction and imposed fines and prison sentences on persons convicted of interfering with another citizens's exercise of the franchise.

GREEN, BECHER, GOVIELLO
AMERICAN TRADITION
MERRILL 1986

COLONIAL GOVERNMENT P. 35

(Lengthy explanation including Fundamental Orders of Connecticut but no mention of rights.)

In Connecticut, Hooker joined with two other settlements in framing a constitution called the Fundamental Orders. It provided for a representative government similar to the one in Massachusetts.

NEW STATE GOVERNMENTS P. 81

Almost every state constitution also included a bill of rights, a statement of the fundamental rights guaranteed to the people.

BILL OF RIGHTS P. 120

(Lengthy explanation of Bill of Rights drafting)

After a conference between the House and the senate twelve amendments were submitted to the states. Ten of these, known as the Bill of Rights were eventually drafted.

p. 104 The powers of the national government were further curtailed by the first ten amendments to the Constitution known as the Bill of Rights. These amendments gave Americans a set of guaranteed liberties. For example the First Amendment protected freedom of religion, speech, press and peaceful assembly. The Eighth Amendment prohibited the use of cruel and unusual punishment and the fifth amendment guaranteed the right of due process of law.

p. 105 AMENDMENT 2 Guarantees the right to organize state militia to bear arms.

p. 800 (ed) The right to keep and bear arms is not free from government restriction. The federal government and the states can and do regulate the possession and use of firearms such as requiring the licensing of guns and prohibiting the carrying of concealed weapons.

SLAVE CODES P. 223

All of the Southern states had slave codes--laws which defined slaves as property with few if any legal rights.

14TH AMENDMENT P.278

Fearing that the Civil Rights Act might be overturned in Court, Congress in June 1866 passed the 14th amendment to the Constitution. This amendment defined citizenship in include blacks.

BLACK CODES P. 276

The series of laws passed after the Civil War to deal with the freedmen were known as the black codes. These laws severely limited the rights of blacks..They could not testify against whites in court, serve on juries or handle weapons of any kind.

KU KLUX KLAN P.284

The Klan used threats, beatings and murder to keep freedmen and other Republicans from voting.

JORDON
The Americans
Mc Dougal, Little & Co. 1990

BILL OF RIGHTS
2ND AMENDMENT P. 173

A citizens's right to bear arms is related to the maintenance of a militia. Various restrictions have been placed on the right including the requirements of gun licenses and the restricted right to carry concealed weapons.

LINKING PAST TO PRESENT P. 209

The Bill of Rights is alive and well and in the news almost daily. An ongoing debate among Americans is whether the Second Amendment give each person the right to own a hand gun.

BLACK CODES P. 388

The black codes varied...At the same time however, blacks could not serve on juries, carry weapons, testify against whites or marry whites.

KLAN P. 395

After a while the secret societies began burning black owned cabins and churches.

LARAUS, MORRIS, SOBEL
CHALLENGE OF FREEDOM
GLENCO, MCGRAW HILL 1990

BILL OF RIGHTS P. 126
(Chart of major freedoms; lengthy explanation of bill or rights drafting)

The first 10 amendments became known as the Bill of Rights. The first eight amendments listed the rights that members of the first Congress believed to be the most important rights of people living in a free country.

P. 208 SLAVE CODES

Together these laws formed the slave codes, the body of laws that government slaves. (Lengthy explanation of life and times of slave holders)

p. 242 Harsh laws--called slave codes were passed throughout the South.

BLACK CODES P. 317

All the former Confederate states except Tennessee had passed Black Codes. These were laws that restricted the rights of freedmen.

GLENN LINDEN
LEGACY OF FREEDOM
LAIDLAW PUBLISHERS

BILL OF RIGHTS P. 153
Amendment 2: Congress cannot take away a citizen's right to serve in a state militia and to bear arms.

BLACK CODES P. 338
Every southern state passed a series of black codes--laws that severely restricted the former slaves....Also blacks were forbidden to own land in certain areas and they were not allowed to bear arms.

14th amendment p. 341
Slowly the Fourteenth Amendment began to take shape, extending citizenship and equal protection of the law to the ex-slaves and incorporating these rights into the Consutution...The Fourteenth Amendment guaranteed black Americans the right of citizenship.

KU KLUX KLAN P. 351
Groups like the Ku Klux Klan left a legacy of hatred.

NASH, GARY
THE AMERICAN PEOPLE
HARPERCOLLINS PUBLISHERS 1990

SLAVE CODES p. 74
Although slave codes severely restricted the lives of slaves, the possibility for family life increased as the southern colonies matured.
p. 190
By mid 1775 the Cape Fear region, like most areas from Maryland to Georgia buzzed with rumors of slave uprisings. Importations of new slaves were banned, and patrols were dispatched to disarm all blacks in the area.

COLONIAL GOVERNMENT P. 127
The militia called to arms by the governor to "suppress the mob by force, and if need be to fire upon 'em with ball," refused to respond....

STATE GOVERNMENTS P. 204
The architects of Pennsylvania's constitution provided for a single, all powerful legislative house, its members elected annually, its debates open to the public..The bill of rights introducing the document guaranteed every citizen religious freedom, trial by jury and freedom of speech,

BILL OF RIGHTS P. 242
These ten became the Bill of Rights. Among other things, they guaranteed freedom of speech, press and religion; pledged the right of trial by jury, the right to bear arms, and the right to due process of law...

BLACK CODES P. 545
The key to reestablishing white dominance were the "black codes" that state legislatures passed in the first year after the end of the war. Many of the codes granted freedmen the right to marry, use and be sued, testify in court and hold property. ...Some rights were denied, including racial intermarriage and the right to bear arms...

CIVIL RIGHTS ACT 1866 P. 548
Congress passed a civil rights bill to protect the fragile rights of the blacks and extended for two more years the Freedmen's Bureau...In Memphis for example a race riot occurred in May 1866 that hyped race relations during the Reconstruction period...In this inflamed atmosphere, a street brawl erupted between the police and some recently discharged but armed black soldiers...When it was over 48 persons, all but two of them black had died in the riot.

14TH AMENDMENT P. 548
A month later, Congress proposed to the states the ratification of the Fourteenth Amendment.

KKK P. 560
The Ku Klux Klan was only one of several secret organizations that used force against black and white Republicans to drive them from power...Three Force Acts, passed in 1870 and 1871, gave the president strong powers to use federal supervisors to make sure that citizens were not prevents from voting by force or fraud. The third act, known as the Ku Klux Klan Act declared illegal secret organizations that used disguise and coercion to deprive others of equal protection of the laws.

JOHN R. O'CONNOR
EXPLORING AMERICAN HISTORY
GLOBE 1991

COLONIAL GOVERNMENT P. 147

Colonists believed strongly in the liberties or rights they enjoyed as British citizens. These included the right to trial by jury, like the Zenger trial and the right to approve taxes.

BILL OF RIGHTS P. 239

James Madison proposed the first ten amendments to the Constitution called the BIll of Rights. These amendments guarantee every American the right to speak, write and worship freely in the U.S. The BIll of Rights protects Americans from unreasonable search of their homes. It guards them against the taking of their belongings by the police or other government officials. The Bill of Rights forbids courts from making people give evidence or proof of wrongdoing, against themselves. It also promises every citizen a speedy and public trial and prohibits cruel and unusual punishment.

P. 264

AM. 2 (ED). The people have a right to keep a militia or National Guard, to protect their state. The courts have generally interpreted this amendment to mean that the government may restrict private ownership of weapons.

SLAVE CODES P. 373

Southern states passed new slave codes that were harsher than before. Some of the new laws made it a crime for groups of slaves to meet together unless there was a white person present. Other new laws aimed at preventing slaves from reading anti-slavery books.

BLACK CODES P. 418

The new Southern state governments passed harsh black codes. Black codes were laws that kept many important rights from the freedmen...African Americans could not vote, hold government offices or serve on juries. The new black codes also focused most freedmen to work as farm laborers.

KU KLUX KLAN P. 421

...They were aided by secret groups like the Ku Klux Klan which used terror and violence against African Americans to keep them from voting.

14TH AMENDMENT P. 419

The fourteenth amendment stated that freedmen were citizens who were protected by laws equally with all other citizens. The amendment also said that freedmen's rights to life and liberty and property could not be taken away by the states.

PECK, IRA
AMERICAN ADVENTURES: PEOPLE MAKING HISTORY
SCHOLASTIC

BILL OF RIGHTS P. 162
These 10 amendments make up the Bill of Rights. Some of them do not seen as important today as they once did. For example, the Third Amendment says that soldiers cannot be put up in a private home without the owner's consent...
p. 827 (ed). The states have to right to keep armed militia for protection.

SLAVE CODES P. 226
Turner's uprising shook the whole South. After the rebellion, the Southern states passed even harsher laws against blacks, free or slave. They were forbidden to meet in groups, drink liquor, have guns, or travel freely.

BLACK CODES P. 376
Southern whites felt that they had to control the ex-slaves. One by one, legislatures in Southern states began passing Black Codes. Under many of these codes, blacks could be arrested for almost any reason. They could not own guns or own property.

14TH AMENDMENT P. 380
These laws included the Civil Rights Act and the Fourteenth Amendment, which made all black males full citizens, with rights to equal protection under the law.

1866 CIVIL RIGHTS ACT P. 391
Congress passed the first Civil Rights Act today. It is the first piece of legislation designed to help the treatment of freed blacks in Southern states.

KKK P. 391
But most alarming of all developments in the South is the formation of the Ku Klux Klan in Tennessee. This group was organized to block the federal government's efforts on behalf of Southern blacks. Hooded nightriders travel the countryside terrorizing black people. Arson, beatings and murder are their weapons.

DONALD RITICHIE
HERITAGE OF FREEDOM
MACMILLIAN

SLAVE CODES P. 61
The slave codes prohibited slaves to have weapons, to leave the plantation or to meet together.
p. 338 Free black people could not vote, testify against white people in court, assemble together in groups or carry weapons.

BILL OF RIGHTS P. 154
The first ten amendments to the Constitution ratified in 1791 are known as the Bill of Rights...
AMENDMENT 2 p. 173
The purpose of this amendment is to guarantee states the right to keep a militia or National Guard. The courts have generally ruled that this amendment does not restrict the power of the government to regulate private ownership of weapons.

BLACK CODES P. 378
All the new Southern legislatures therefore passed "black codes" to regulate the freed black people. Less harsh than the slave codes that had existed before the war, the black codes permitted black Southerners a few basic rights. They were allowed to own property, to marry among themselves, and to secure the protection of the laws. However, they were not allowed to serve on juries or to vote.

14TH AMENDMENT P. 380
The most important portion of the 14th amendment, ratified in 1868 is Sec. 1. It specifically overrode the Dred Scott decision by making all persons born in the United States citizens of the United States and of the states in which they live. It also forbids any state to deprive its citizens of equal rights under the law.

KU KLUX KLAN P. 387
The Klan was quite willing to use violence, including whipping and murder to back up its threats...In 1870 and 1871 Congress passed Force Acts to use federal troops to protect the freedman's right to vote and to prosecute those who tried to keep them from voting.

PHILIP RODEN
LIFE AND LIBERTY
SCOTT FORESMAN 1984

BILL OF RIGHTS P. 92

A Bill of Rights is a list of rights that a government must protect. All states protected the right to free speech, a free press and religious freedom. They also protected the right to a jury trial and the right of people to assemble or meet together.

p. 142

AMENDMENT 2. The Second Amendment guarantees the right of the people to "keep and bear Arms." This means at least that the people may protect themselves by forming a militia. People disagree as to whether it also means Congress cannot make it illegal to own pistols.

p. 165

The people have the right to protect themselves by serving as armed citizens (militia) and Congress cannot stop them. However Congress has restricted possession of particular weapons such as sawed-off shotguns, concealed weapons and machine guns.

SLAVE CODES P. 244

(Chart of 16 laws including:

3. Slaves were not allowed to have weapons.

BLACK CODES P. 306

Also, many southern states had passed black codes much like those that had governed slaves before the war. They restricted the movement of freed slaves. In some towns, blacks were not allowed into town without written permission from their employer. A black person who had no job could be arrested for vagrancy. If he or she could no pay the fine, the person could be hired out to work for someone who could pay it. Blacks were also forbidden to testify against a white person in court.

AMENDMENT 14 307

Amendment 14 guaranteed citizenship to blacks.

KKK P. 309

The Ku Klux Klan became the best-known terrorist group. Organized in Tennessee in 1865 the Klan moved throughout the South to restore what its members called "law and order."

TODD AND CURTI
TRIUMPH OF THE AMERICAN NATION
Harcourt, Brace, Jovnanovich 1990

SLAVE CODES P. 70

Beginning in the 1680's, Southern slave owners tried to solve this problem by passing slave codes....To prevent slave revolts, the codes forbade slaves to meet together, leave the plantation, or own weapons.

COLONIAL GOVERNMENTS P. 92
(No mention)

BILL OF RIGHTS P. 180.

Among the guarantees of liberty in the Bill of Rights, several are especially important. The First Amendment guarantees freedom of religion, speech, press, assembly and petition. The Fourth Amendment forbids unreasonable searches and seizures of any person's home. The 5, 6, and 8 the amendments protects individuals from arbitrary arrest and punishment by the federal government.

p. 181 Chart on Bill of Rights (right to keep weapons)

P. 207 2nd Amendment

The purpose of the amendment was to prevent Congress from denying states the right to have a militia (or National Guard) of armed citizens. It also protected American's right to keep weapons in order to resist a tyrannical government. However, Congress and many states have regulated the ownership and use of weapons by citizens through gun control legislation.

BLACK CODES P. 452

Laws of this kind, known as "slave codes" had existed before the war. The new black codes which varied from state to state, contained many of the same provisions as the old slave codes...

However, in general the codes denied blacks their basic civil rights. Mississippi, for example, using its old code, merely substituted the word "Negro" for "slave". Black southerners were forbidden to possess firearms unless licensed to do so...

KLAN P. 461

These secret organizations tried to frighten black southern and then white sympathizers into staying out of politics...

CLARENCE L. VER STEEG
AMERICAN SPIRIT A HISTORY OF THE AMERICAN PEOPLE
PRENTICE HALL

BILL OF RIGHTS P. 192
CHART P. 192: 2. The right to keep and to carry firearms for self-protection.
p. 192. The ten amendments that were ratified became known as the Bill of Rights. They went into effect in 1791.

1866 CIVIL RIGHTS ACT
In April 1866 Congress passed a civil rights act over President Johnson's veto. This act gave the freed blacks their rights as citizens. It also gave federal courts, rather than state and local courts the right to try civil rights cases.

14TH AMENDMENT P. 431
The Reconstruction Congress added two other amendments to the Constitution. The first of these, the Fourteenth Amendment, was proposed in 1866 and ratified in 1868. Its first section defines citizenship and declared that no state may deprive any person of life, liberty or property without due process of law. In other words all men black or white should have the same legal rights. The second section of the amendment says that any state denying any of its male citizens the right to vote could have its representation in Congress reduced. Thus, if half a state's voters were black and all blacks were denied the vote, that state could lose half of its representatives in Congress. With this amendment, Congress warned the South not to deny the vote to blacks, though no state was ever punished under it.

KKK P. 436
Perhaps the most serious threat of lawlessness came with the appearance of the Ku Klux Klan and other secret groups in 1865. Through such bands southern whites hoped to regain control of their states. They used force or the threat of force against black voters. IN 1871 alone 163 blacks were murdered in one Florida county. Some 300 blacks were murdered around New Orleans.

JAMES E. DAVIS
CIVICS PARTICIPATING IN OUR DEMOCRACY
ADDISON WESLEY 1991

ENGLISH HERITAGE P. 76
The English Bill of Rights listed the rights of all English citizens, not just nobles. It included the ideas that would later find a place in our government. One is that everyone even government leaders, must obey the law. Another is that all people have the right to a trial by jury and the right to make a formal petition or request to the government.

COLONIAL p. 71
Many of our American rights and traditions can be traced back to the colonial period.
p. 72 We Americans have many freedoms. Among these are freedom of the press, freedom of religion. Such individual freedoms however, were unknown for most of human history. They became part of our heritage mainly through the efforts of the colonists.

SLAVE CODES P. 72
In no colony could women, servants or slaves vote. Colonial laws not only denied slaves the right to vote, but also treated them as property rather than as people.

STATE CONSTITUTIONS P. 80
Some state constitutions also included a list of citizen's rights such as trial by jury and freedom of religion.

BILL OF RIGHTS P. 120
For the purposes of maintaining a state militia, citizens may keep and bear arms. Congress has prohibited the possession of certain firearms, however such as sawed-off shotguns and machine guns.
Chart p. 135 Guarantees the right to possess firearms
p. 136

The Second Amendment supports the right of citizens to "keep and bear arms" that is, to own and carry weapons. In colonial America, the right to keep and use firearms had been important for a number of reasons. At that time, no police force, national army, or national guard existed. Citizens in rural areas often had to protect themselves from Indian attacks. Later, many colonists thought that they needed firearms to resist England's attempts to deny them their rights. Of course, without weapons the colonists could not have eventually rebelled against English rule.

Following independence, each state maintained its own militia, which was important for security. IN recent years, some people have argued that the right to own weapons is more appropriate for a frontier society than for today's urban society. Others believe that it is still an important right, although the government may have to make laws regulating the ownership and use of guns.

14TH AMENDMENT P. 154
The Fourteenth Amendment, adopted in 1868 ensure citizenship for blacks.

JACK FRAENKEL
CIVICS GOVERNMENT AND CITIZENSHIP
PRENTICE HALL 1990

BILL OF RIGHTS P. 57
The Second Amendment. This amendment was added to the Constitution in order to give states the right to keep a militia. A militia is a home guard. It is made up of people who volunteer to serve their state. When the Constitution was written, the states and the national government needed the militia for defense.
p. 518
The federal government cannot deny the states the right to keep an armed militia.

14th AMENDMENT P. 61
The Fourteenth Amendment made black people citizens. It states that:
All people born or naturalized in the United States and subject to its laws are citizens.
No state may state away a citizen's Constitutional rights.
The states must treat all citizens equally.

The Fourteenth Amendment is important because it guarantees full Constitutional rights to all of us, no matter what our race, color, national background or religious belief.

RICHARD HARDY
GOVERNMENT IN AMERICA
HOUGHTON MIFFLIN 1991.

ENGLISH HERITAGE P. 32
...The English Bill of Rights includes these guarantees... The right of certain subjects to keep and bear arms. This provision is found in the Second Amendment.

STATE GOVERNMENTS P. 43
Remembering their difficulties with colonial rule, seven states included a bill of rights. These listed the basic civil liberties of citizens.

BILL OF RIGHTS P. 76
The Second Amendment guarantees the states the right to have a militia and the people the right to "keep and bear arms."
P. 128 (Listing of rights)
Amendment 2 guarantees that the federal government cannot deny states the right to enlist citizens in the militia and to provide them with training in the use of weapons.

14TH AMENDMENT P. 194
The Fourteenth Amendment, passed in 1868, clearly defined citizenship. "All persons subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." The amendment promised all black Americans "equal protection of the laws."

WILLIAM A. MCCLENAGHAN
MAGRUDER'S AMERICAN GOVERNMENT
PRENTICE HALL 1991

ENGLISH HERITAGE P. 29

The history of many of the basic rights held by the people of the United States can be traced to several landmark documents from England. Together these documents laid the foundations for such concepts as limited government, representative government, popular sovereignty, and civil liberties.
(Mentions Magna Carta, Petition of Right and Bill of Rights without description of right to bear arms.)

STATE GOVERNMENTS P. 37

The first State constitutions differed, sometimes widely, in detail. Yet they shared many common features...

Civil Liberties. Seven of the new documents contained a bill of rights, setting out the "unalienable rights" held by the people. In every State it was made clear that the sovereign people held certain rights that government must at all times respect....

P. 541 The first State documents differed in many ways..Seven constitutions began with a lengthy bill of rights. All of them made it clear that the sovereign people held "certain unalienable rights" that government must respect.

BILL OF RIGHTS P. 63

Collectively, the first 10 amendments are known as the Bill of Rights. They set out the great constitutional guarantees of freedom of expression and belief, of freedom and security of the person, and of fair and equal treatment before the law. We shall look at them in detail in Chapters 5 and 6.

P. 101 THE SCOPE OF THE BILL OF RIGHTS. Remember, these first 10 amendments were added to the Constitution in 1791 to meet one of the major objections to its ratification. Those amendments were originally intended as restricts on the new National Government, not as limits on the already existing States. That remains the fact of the matter today.
Take the 2nd Amendment to make the point here. It reads:

> A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

As a provision in the Bill of Rights, this restriction applied only to the National GOvernment. The States may, and very often do, limit the right to keep and bear arms. THey may require the registration of all or all of certain guns, forbid the carrying of concealed weapons, forbid the ownership of automatic weapons, forbid the ownership of automatic or semi-automatic weapons and son on. (As a matter of fact, the 2nd Amendment does not really impose a very significant limit on the National Government, either--as we shall see in Chapter. 6.

p. 140 RIGHT TO KEEP AND BEAR ARMS

The 2nd Amendment reads this way:

> A well regulated militia being necessary to the free state, the right of the people to keep and bear arms shall not be infringed.

Read those words again, carefully for the 2nd Amendment is widely misunderstood. It was added to the Constitution to protect the right of each State to keep a militia. Its aim was to preserve the concept of the citizen soldier, the "minute-man," as its text clearly suggests. It does not guarantee to any person a "right to keep and bear arms" free from restriction by government.

The only important Supreme Court case dealing with the 2nd Amendment is United States v. Miller, 1939. There, the Court upheld a section of the National Firearms Act of 1934. That section makes it a crime to ship sawed-off shotguns, machine guns, or silencers across State lines unless the weapons have been registered with the Treasury Department and a $200 tax has been paid. The Court said that it could find no reasonable link between the sawed-off shotgun involved in the case and "the preservation ...of a well regulated militia."

The Court has never found the 2nd Amendment to be within the meaning of the 14th Amendment's Due Process Clause. Thus, each of the States may limit the right to keep and bear arms--and all of them do in various ways.

p. 141 FOCUS ON: GUN CONTROL: YES OR NO?

The mere mention of gun control laws--of measures to restrict or prohibit the ownership of firearms--sparks intense debate nearly everywhere today.

Suppose that you are a member of your city's council and now, at today's council meeting you must vote on a gun control ordinance. Your six colleagues on the council are evenly divided on the question. Three are for the measure and the other three oppose it. Your vote will decide the matter.

The proposed ordinance has been carefully drawn. It would apply only to handguns. At base, it would outlaw the private possession, use or sale of nearly all such weapons within the city. The only exceptions to the band would be those handguns kept in gun collections or used only for target-shooting purposes.

You have been bombarded by arguments, pro and con, at several long crowded and often stormy council sessions, in the newspapers, on television, on the telephone, by mail and in many other places.

Most who support the ordinance have argued that its adoption would help to reduce violent crime in your city. THey have built much of their case on the FBI's crime reports. The statistics in those reports show that firearms are no used to commit more than 11,000 murders, 200,000 aggravated assaults, and 180,000 robberies in this country every year. And they also point to the thousands of accidental deaths and injuries that occur every year because of the careless handling of firearms.

Many who want the ordinance passed have also said that they are most deeply concerned about "Saturday-night specials"--those small, cheaply made, and easily concealed pistols, which they say are the weapons most often used by criminals.

Most supporters of the proposal are deeply troubled by all handguns. They claim (again with FBI support) that well over 70 million handguns are now in circulation in the United States. That mindboggling number, they say--the sheer, all-too-ready availability of those weapons--is itself a major cause of violent crime. As one of them put it at the last council meeting: If you pass this ordinance, it will be much more difficult for the bad guys to get hold of guns. It's a heckuva lot harder to rob a bank with a knife or a baseball bat than it is to do that job with a pistol."

The opponents of the measure have made a strong case, too. Nearly all of them have cited the 2nd Amendment and what they insist is the Constitutional guarantee of their right to keep and bear arms. Most of them have also developed a number of other points.

They have said that the anti-gun people are aiming at the wrong target. Guns don't kill people. They have also argued that criminals will always find guns somewhere, even if they are outlawed. Further, they have said that the only thing this law would do is make it more difficult for decent people to defend themselves against the criminals in your city.

One of the measure's opponents took the FBI's statistics and turned them back on its proponents: "If you look closely at the FBI's data," he said, "You will see that the average American citizen can expect to live for at least 23,000 years before he or she is murdered."

Other points were made, on both sides. But these were the major ones and now the debate is over. Now you must cast your vote. Based on the information presented, what will it be, and why?

14th amendment p. 101

The Court extended the scope of the 14th Amendment's Due Process Clause event further in several cases in the 1960's to the point where, today it covers nearly all of the guarantees set out in the Bill of Rights. (Gives a lengthy explanation of 8, 6, and 5th amendments with cases which have the same coverage but never mentions that the 2nd is not covered in this section.)

RICHARD C. REMY
GOVERNMENT IN THE UNITED STATES
GLENCOE/MACMILLIAN/MAGRAW HILL 1990

ENGLISH HERITAGE P. 32

By the time the first colonists reached North American, the idea that government was not all-powerful had become an accepted part of the English system. The idea first appeared in the Magna Charta or Great Charter, signed by King John of England in 1215. This document provided for trial by jury of one:s peers, or equals, for protection against unjust punishment and the loss of life, liberty and property except according to the law...

The English Bill of Rights set clear limits on what the king or queen of England could and could not do....

Locke reasoned that all persons were born free, equal, and independent. They possessed natural rights to life, liberty and property at the time they lived in a state of nature, before governments were formed...

COLONIAL GOVERNMENTS P. 35

In 1639 Puritans who had left Massachusetts Bay Colony to colonize Connecticut drew up America's first written constitution, called the Fundamental Orders of Connecticut....

BILL OF RIGHTS P. 71

The Bill of Rights limits the power of government. Its basic purpose is to protect two kinds of rights: rights of individual liberty such as freedom of speech and rights of persons accused of crimes such as the right to a trial by a jury.

Originally, the Bill of Rights applied only to the national government. When the Constitution was adopted, some states already had guarantees of basic rights in their constitutions. It seemed necessary to add similar limits to the new national government. Since then, nearly all the provisions of the Bill of Rights have been applied to the states through a series of Supreme Court decisions...

p. 600 When the Constitution was adopted, Americans were distrustful of their new and distant national government. The Bill of RIghts was intended to place certain limitations on the national government: to prevent it from controlling the press, restricting speech, influencing religion and limited other areas of personal liberty...

THE SECOND AMENDMENT. The 2nd and 3rd Amendments were designed to protect citizens against a repetition of actions taken by the British. During colonial times, the British tried to take weapons away from the colonial militia--that is, the citizens' armed forces set up by the colonies. The British also sent soldiers to live in the colonists hones against their will.

The 2nd Amendment is designed to prevent the national government from taking weapons away from a state militia or the National Guard, as it is called today. This amendment does not prevent Congress from regulating the interstate sale of weapons. Nor does it apply to the states. States are free to regulate the use and sale of firearms as they see fit.

p. 766 For the purpose of maintaining a militia(National Guard) the people may not be deprived of their right to own and keep weapons.

14TH AMENDMENT P. 75

The 14th Amendment(1868) protects rights of citizenship. It prevents states from depriving any person of life, liberty or property without "due process of law." And it states that all citizens has the right to equal protection of the law in all states. The original purpose of the amendment was to protect the legal rights of freed slaves and their descendants.

p. 600 Since the Gitlow case, almost all of the other rights provided for in the first ten amendments have been incorporated and nationalized by the Supreme Court in various cases. The only exceptions are the 2nd, 3rd, and 10th Amendments.

RIGHT TO BEAR ARMS TODAY P. 640

(The section entitled "Our Changing Society presents new Challenges for Civil Liberties" has no mention of right to bear arms.

D. GRIER STEPHENSON, JR. BRESLER, FRIEDRICH AND KALRESKKY
GOVERNMENT
HARPER COLLINS PUBLISHERS 1992

COLONIAL GOVERNMENT P. 21
The months following formal separation of the colonies in America from Great Britain in July 1776 witnesses a flurry of constitution writing in the states. (no mention of Bill of Rights)

BILL OF RIGHTS P. A12
A right of self-defense assured the states of a ready force for local militia (the precursors to today's National Guard).

14TH AMENDMENT P. 48
Significant as were the changes they eventually wrought in the life of the nation, even those amendments pale alongside the Fourteenth Amendment (1868) which fundamentally altered the relations between the national and state governments.

TURNER, SWITZER, REDDEN
AMERICAN GOVERNMENT
MERRILL, 1991.

STATE GOVERNMENTS p. 36

Each of the state constitutions also limited the power of its government. At the same time, there was so much concern about protecting the rights of the people that seven states included a special section called a bill of rights. These included the right to trial by jury, the right to worship as one chooses, and the right to speak out against the government.

BILL OF RIGHTS P. 60

The Second Amendment guarantees us the right to keep weapons. It also prevents the national government from seizing weapons from state militia or the National Guard. The British tried to do this in colonial times and many feared that an unlimited government might try to do it again. This amendment does not prevent the states from regulating the sale and use of firearms. States many require weapons to be registered or may prohibit possession of machine guns and assault weapons.

JAMES Q. WILSON
AMERICAN GOVERNMENT
D.C. HEATH 1992

STATE GOVERNMENTS P. 17

In 1776 eight states adopted written constitutions...Most had detailed bills of rights defining personal liberties and most placed the highest political power in the hands of elected representatives.(Gives details of Massachusetts and Pennsylvania constitutions).

BILL OF RIGHTS P. 34

Chart: amendments grouped:

1) Protection afforded citizens to participate in the political process
2) protection against arbitrary police and court action
3) protection of states' rights and unnamed rights of people
4) other amendments

(Second Amendment is here)

A_16 (Right to bear arms) A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

14th Amendment p. 521

The Fourteenth Amendment was both the opportunity and the problem. Adopted in 1868 it seemed to guarantee equal rights for all:

TABLES

Diagram A
Category System
Events by Authors

English Heritage
Colonial Government
Slave Codes
State Government
Bill of Rights
1866 Act
14th Amendment
Black Codes
KKK
U.S. vs Cruishank
Presser vs Illinois
U.S. vs Miller
National Firearms 1934
Gun Control Act 1968

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DIAGRAM B
CATEGORY SYSTEM
AMENDMENTS BY AUTHORS

1				
2				
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26				

TABLE I
US HISTORY AUTHORS BY EVENTS

	BAILEY	BERKIN	BLUM	BOORSTIN	BOYER	BRAGDON	BRANSON	CONLIN	DAVIDSON	DIBACCO	DIVINE	GARRATY	GREEN	JORDAN
ENG.HER.		N									N			
COL.GOVT.					N			N		N			N	
SLAVE CODES	N		N		N			N	N	N	N	N	N	
STATE GOVT.		N			N	N		N	N		N	N	N	
BILL OF RIGHTS	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y
1866 ACT	N	N		N	N							N		
14TH AM		N			N		N	N		N	N	N	N	
BLACK CODES	N	Y	N	N	N	Y	N	Y	Y	N	N	Y	Y	Y
KKK		N	N	N	N			N	N	N	N	N	N	N
US v. CRUIKSHANK			N		N									
PRESSER v.ILLINOIS														
US V. MILLER														
NAT. FIREARMS 1934														
GUN CONTROL ACT 1968														

	LARAUS	LINDEN	NASH ODYSSEY	NASH PEOPLE	O'CONNER	PECK	RITCHIE	RODEN	TODD & WRT	VER STEEG	TOTAL
ENG.HER.											0
COL.GOVT.				N	N				N		0
SLAVE CODES	N			Y	N	Y	Y	Y	Y		5
STATE GOVT.			N	N							0
BILL OF RIGHTS	N	Y	N	Y	N	Y	Y	Y	Y	Y	17
1866 ACT			N	N		N				N	0
14TH AM			N	N	N	N	N	N		N	0
BLACK CODES	N	Y	N	Y	N	Y	N	N	Y		10
KKK		N	N	N	N	N	N	N	N	N	0
US v. CRUIKSHANK			N								0
PRESSER v.ILLINOIS											0
US V. MILLER											0
NAT. FIREARMS 1934											0
GUN CONTROL ACT 1968											0

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TABLE II
AMERICAN GOVERNMENT AUTHORS BY EVENTS

	DAVIS	FRAENKEL	HARDY	MCCLENAGHAN	REMY	STEPHENSON	TURNER	WILSON	TOTAL
ENG. HER.	N		Y	N	N				1
COL. GOVT.	N				N	N			0
STATE GOVT.	N		N	N			N	N	0
BILL OF RIGHTS	Y	Y	Y	Y	Y	Y	Y	Y	8
14TH AM.	N	N	N	N	Y	N		N	1
US v. CRUIKSHANK									0
PRESSER v. ILLINOIS									0
US v. MILLER				Y					1
NATL FIREARMS 1934				Y					1
GUN CONTROL ACT 1968									0

TABLE III
COVERAGE OF AMENDMENTS BY U.S. HISTORY AUTHORS

	BAILEY	BERKIN	BLUM	BOORSTIN	BOYER	BRAGDON	BRANSON	CONLIN	DAVIDSON	DIBACCO	DIVINE	GARRATY	GREEN	JORDAN	LARAUS	LINDEN	NASH ODYSSEY	NASH PEOPLE
1	1	3	3	3	3	1		1	2	2	3		2	3			1	1
2		1	1		1	1		1	1		1	1	1	1			1	
3		1	1			1		1	1		1		1	1			1	
4		1	1			1		1	1		1	1	1	1			1	
5	1	1	2		2	1		1	3	2	1	1	2	1			1	
6		1	1			1					1	1	2	2			1	
7		1	1			1			1		1		1	1			1	
8		2	1			1			1		1	1	2	1			2	
9	1	1	2			1			1		1		1	1			1	
10		1	2			1			2		1	1	1	1	1	1	1	
11		1	2		2	1				1	1			1			1	
12	2	1	2	1	1	1		1			2	2		3	1	1	1	
13	2	1	3	2	2	1	1	1	3	3	3	4	1	5	2	2	1	1
14		7	9		8	7	1	2	4	5	5	5	5	6	5	5	2	8
15	3	2	5	4	5	2	1	1	4	4	5	2	1	6	1	1	4	5
16		2	3		3	3	1	3	2	4	1	1	1	5	1	1	1	1
17	1	3	2	1	2	1		1	3	2	3	3	1	4	2	2	2	1
18	5	3	6	3	7	4	1	1	2	4	3	4	2	5	2	2	4	3
19	1	3	1	3	5	3	1	3	4	3	3	1	1	3	2	2	3	2
20	3	1	1	1	2	1		1		1	1	1	1	4			1	1
21	1	2	1			1	1		1	1	1		1	3	1	1	2	1
22	3	1	2	1		1					1		1	2	1	1	1	
23		1	1		1	1					1			3			1	
24		1	1	2		1			2	1	1	1	1	4	1	1	1	
25		1	4	1	1	1			1	1	1		1	5	1	1	1	
26		2	2	1		1			1	1	1		1	2	1	1	1	

TABLE III
COVERAGE OF AMENDMENTS BY U.S. HISTORY AUTHORS

	OCONNER	PECK	RITCHIE	RODEN	TODD	VERSTEEG	TOTAL
1	4	1	3	2	2	1	42
2			1	2		1	14
3			1	3		1	14
4			1	3	1	1	15
5		1	1	3	1	1	26
6			1	3	1	1	16
7			1	3		1	13
8			1	2	1	1	17
9			1	2		1	13
10			3	2		1	19
11			1	2			13
12			5	3		1	28
13	1	5	5	4		2	57
14	2	2	6	8	1	4	107
15	2	1	5	8	1	5	78
16			6	3		1	43
17			6	4	1	1	46
18	1	5	3	3		2	75
19	1	3	5	3	2	4	60
20			5	3			28
21	1		3	3		2	27
22			3	3		1	22
23			2	2			13
24			6	2			26
25			5	2		1	28
26			4	2		1	22

TABLE IV
COVERAGE OF AMENDMENTS BY U.S. GOVERNMENT AUTHORS

	DAVIS	FRANKEL	HARDY	MCLONAGHAN	REMY	STEPHENSON	TURNER	WILSON	TOTAL
1	15	6	14	14	25	9	10	12	105
2	2	3		2	1	1	1		10
3	1	2		2	1	1	1		8
4	5	2	9	12	10	5	6	2	51
5	5	3	12	11	7	3	5	3	49
6	5	2	9	6	5	2	4	2	35
7	1	2		3	1	1	1		9
8	3	3	4	5	2	2	4		23
9		2	2	2	1	2	2		11
10	4	2		4	1	5	6	2	24
11		1		1	1	4	3	2	12
12		1		6	2	1	1	1	12
13	4	3	1	7	3	3	2	2	18
14	6	3	13	30	12	10	6	10	90
15	2	2	2	9	1	1	2	4	23
16		2			5	2	4	2	15
17	1	3		4	4	1	1	1	15
18		1		2	1	1	2		7
19	1	3	1	6	1	7	3	3	25
20		1		3	3	1	2		10
21		2		3	6	1	2		14
22		2		3	8	2	3	1	19
23		2		2	3	1	1	1	10
24	1	3		7	5	1	3		20
25		2		6	8	1	2	2	21
26	1	2		7	6	4	3	3	26

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